

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: Is the Tribal Council a public body performing a function of government within the meaning of paragraph 149(1)(c)

POSITION: yes

REASONS: The Tribal Council is considered a public body and is performing a function of government.

2013-049471

Dear XXXXXXXXXXXX:

Re: Public Body Ruling – XXXXXXXXXXXX

This is in reply to your letter of XXXXXXXXXXXX, in which you requested a public body ruling on behalf of the above-named taxpayer. We also acknowledge your additional submissions of XXXXXXXXXXXX as well as various telephone conversations (XXXXXXXXXXXX).

We understand that, to the best of your knowledge and that of the taxpayer, none of the issues involved in the ruling request are:

- (i) in an earlier return of the taxpayer or a related person;
- (ii) being considered by a tax services office or taxation centre in connection with a previously filed tax return of the taxpayer or a related person;
- (iii) under objection by the taxpayer or a related person;
- (iv) before the courts, or if a judgment has been issued, the time limit for appeal to a higher court has expired; or
- (v) the subject of a ruling previously considered by the Directorate to the taxpayer or a related person.

Unless otherwise stated, all references to a statute are to the Income Tax Act (Canada), R.S.C. 1985, c.1 (5th Supp.), as amended to the date of this letter, (the “Act”), and all terms and conditions used herein that are defined in the Act have the meaning given in such definition unless otherwise indicated.

Our understanding of the relevant definitions and facts is as follows:

DEFINITIONS:

In this letter, the following terms have the following meanings:

- a) “Aboriginal Rights” means asserted or determined aboriginal rights, including aboriginal title, which are or may be recognized and affirmed by section 35 of the Constitution Act, 1982;
- b) “Band” has the meaning provided under Subsection 2(1) of the Indian Act;
- c) “Band List” means a list of persons that is maintained under section 8 of the Indian Act, by a Band or by Aboriginal Affairs and Northern Development Canada;
- d) “Citizen” means all those persons who are collectively entitled to exercise the Aboriginal Rights of the Nation and includes Community Members;
- e) “Communities” means XXXXXXXXXXXX;
- f) “Community Member” means a member of one of the Communities as shown in the Band List;
- g) “CRA” means the Canada Revenue Agency;
- h) “Indian Act” means the Indian Act R.S.C. 1985, c.I-5, as amended;
- i) “Nation” means the Communities and Citizens as represented by the Tribal Council;
- j) “Province” means the province of XXXXXXXXXXXX;
- k) “Territory” means that portion of the traditional territory in the Province claimed by the Nation and as described in the “XXXXXXXXXXXX” entered into between the Province and the Tribal Council (see paragraph 12); and
- l) “Tribal Council” means XXXXXXXXXXXX.

FACTS:

1. The Tribal Council was incorporated on XXXXXXXXXXXX without share capital, under the XXXXXXXXXXXX, to represent the Nation.
2. The mailing address of the Tribal Council is XXXXXXXXXXXX. The Tribal Council’s Business Identification Number is XXXXXXXXXXXX and it is served by the XXXXXXXXXXXX Tax Services Office. The Tribal Council files its returns with the XXXXXXXXXXXX Tax Centre.
3. Each of the Communities is a Band that has a “reserve” or “reserves” within the meaning of this term as defined under subsection 2(1) of the Indian Act.

4. As a non-share corporation, the Tribal Council has members, who are the representatives who have been elected or appointed as the Chief and Councillors of each of the Communities. While the Community Members are not specifically included as the members of the Tribal Council, there is the presumption that the Chief and Councillors of each Community are acting as representatives for their respective Bands.

5. The Tribal Council's "XXXXXXXXXX Chair" is a Community Member appointed by the members. The Chiefs of each of the Communities, each XXXXXXXXXXXX Chair and the XXXXXXXXXXXX Chair are the directors of the Tribal Council and comprise the "Nation Executive Council".

6. The purposes of the Tribal Council include:

a. To provide an interim structure through which the Nation can organize its government for the purposes of making decisions with respect to Aboriginal title and rights, including governance rights, which are held by the Nation and other matters of concern to the Nation as a collective.

b. To preserve and promote the cultural heritage, language, and identity of the Nation.

c. To protect and preserve the ecological and environmental integrity of the lands, natural resources, waterways, and air within the Territory.

d. To promote the social wellbeing and economic independence of the Nation as a self-governing Nation.

e. To represent the Nation in protecting and advancing Aboriginal title and rights through initiatives including the negotiation and implementation of just agreements.

f. To promote and improve better understanding, communication and relations between the Nation and other First Nations, Aboriginal people, other governments, and the general public.

g. To enter into agreements with other governments, authorities, corporations, or persons on behalf of the Nation, the Communities and Citizens including, but not limited to, agreements regarding consultation and other forms of engagement, accommodation, impact management, revenue and benefit sharing, and potential impacts of Aboriginal rights and title.

h. To receive and administer funding and other assets and benefits on behalf of the Nation, the Communities and Citizens.

i. To acquire and hold property, or an interest in property, and lease, sell, or otherwise deal with that property or interest on behalf of the Nation, the Communities and the Citizens.

j. To provide specialist services in the areas of common interest to the Communities.

- k. To do all things as are incidental or conducive to the attainment of the above purposes.
7. The Tribal Council reports all of its activities and provides its financial statements to Community Members at annual assemblies and through its website.
8. In the event of wind-up of the Tribal Council, any remaining assets are to be transferred to an organization promoting the same objectives and with the same goals as the Tribal Council. Where this provision cannot be carried out, any remaining assets shall be given to a charitable organization that is registered with the CRA.
9. In XXXXXXXXXXXX, on behalf of the Nation, the Tribal Council entered into XXXXXXXXXXXX in respect of the transfer of title of certain lands in the Province. The purpose of this agreement is to demonstrate the commitment of the parties to concluding a final agreement pursuant to the XXXXXXXXXXXX process involving Canada, the Province and the Nation and to provide the Nation with land XXXXXXXXXXXX in advance of the final agreement. In this agreement, the Province acknowledges a government-to-government relationship with the Tribal Council.
10. When the final treaty is negotiated, XXXXXXXXXXXX.
11. The Tribal Council has signed a health and social services transfer agreement with the Government of Canada, where the Tribal Council receives annual funding of approximately \$XXXXXXXXXX until the end of XXXXXXXXXXXX, not to exceed \$XXXXXXXXXX subject to indexation and service changes, if any, to administer the services for which it is responsible under the agreement. The services that the Tribal Council is responsible for include:
- \* targeted health programs (diabetes, nutrition, etc)
  - \* home support and community care
  - \* patient travel
  - \* prenatal services
  - \* youth mental health programs
  - \* addiction counselling

The Tribal Council created an internal department entitled the “XXXXXXXXXX”, and employs a Department Director to administer, plan and coordinate the delivering of health and social services to the Communities. The Tribal Council employs nurses to deliver the services to the Community Members. In addition, the Tribal Council owns and operates the “XXXXXXXXXX”, a facility that provides XXXXXXXXXXXX.

12. On XXXXXXXXXXXX, the Tribal Council and the Province entered into the XXXXXXXXXXXX that provides for government-to-government discussions on natural resource decisions within the Territory. The agreement acknowledges that the Province and the Tribal Council intend to negotiate arrangements to share the revenue and benefits generated from land and resources within the Territory. Under this agreement, \$XXXXXXXXXX was provided over XXXXXXXXXXXX years for training and capacity building to help the Tribal Council more

effectively engage with the Province on land and resource development decisions. The XXXXXXXXXXXX was renewed on XXXXXXXXXXXX.

13. On XXXXXXXXXXXX, the Tribal Council signed the “XXXXXXXXXX” (Agreement), on its own behalf and on behalf of the Nation and the Communities. The Agreement is between the Province and the Tribal Council and was entered into as a consequence of the process embarked upon as part of the XXXXXXXXXXXX. The Agreement acknowledges the Nation’s interest in the regional economy and in receiving a share of the revenues derived from the use of resources within the Territory to support self-government. In addition, the Agreement acknowledges that it will strengthen the government-to-government relationship and close the socio-economic gaps between aboriginal and non-aboriginal peoples. It also contains the recital that states the Tribal Council is an entity empowered by the Communities to perform the functions of government.

14. On XXXXXXXXXXXX, the Tribal Council entered into an “XXXXXXXXXX” related to the administration of the XXXXXXXXXXXX accruing from the operations of the XXXXXXXXXXXX. The XXXXXXXXXXXX was introduced in XXXXXXXXXXXX as part of a mechanism for municipalities and local governments to XXXXXXXXXXXX. Under the XXXXXXXXXXXX, the Province pays a percentage of XXXXXXXXXXXX as financial assistance for any purpose that is of a public benefit for the XXXXXXXXXXXX community. The XXXXXXXXXXXX is located on a reserve that belongs to the Communities and the Communities have assigned their responsibilities and rights under the XXXXXXXXXXXX to the Tribal Council. The Tribal Council expends and manages this financial assistance on behalf of the Communities in accordance with the mandate of the XXXXXXXXXXXX.

15. The Tribal Council has entered into a Memorandum of Understanding (MOU) with the XXXXXXXXXXXX. The purpose of the MOU is to XXXXXXXXXXXX.

16. In XXXXXXXXXXXX, on behalf of the Nation, the Tribal Council entered into XXXXXXXXXXXX with the Province and the XXXXXXXXXXXX that aims to balance social, cultural, environmental and economic values in the XXXXXXXXXXXX area (located in the Territory). The purpose of this XXXXXXXXXXXX is to create an open and confidential environment in which to engage in discussions that will create a framework for land use planning in the XXXXXXXXXXXX area.

17. As a representative of the Nation, the Tribal Council has entered into a MOU with the Government of Canada for the management of XXXXXXXXXXXX in the Territory. The MOU states that the parties wish to provide for an effective, cooperative, government-to-government relationship. The MOU establishes a committee to be created by the Government of Canada and the Tribal Council to manage XXXXXXXXXXXX within the Territory.

18. XXXXXXXXXXXX

19. XXXXXXXXXXXX

20. XXXXXXXXXXXX

**RULING GIVEN:**

Provided that the preceding statements constitute a complete and accurate disclosure of all of the relevant facts and for as long as the facts continue to describe the Tribal Council and continue to describe the activities and purposes of the Tribal Council, we rule as follows:

As of the date of this letter the Tribal Council is considered to be a public body performing a function of government in Canada within the meaning of paragraph 149(1)(c) of the Act, and, accordingly, is exempt from tax under Part I of the Act.

The above public body ruling is based on the Act in its present form and does not take into account any proposed amendments thereto; it is given subject to the general limitations and qualifications set out in IC70-6R6, Advance Income Tax Rulings and Technical Interpretations, dated August 29, 2014 and is binding on the CRA.

This letter is based solely on the facts described above. The documentation submitted with your request does not form part of the facts and any references thereto are provided solely for the convenience of the reader.

Municipal and public bodies performing a function of government in Canada that want to be recognized as qualified donees must apply for registration with CRA. Successful registrants will be added to a public list maintained by the CRA and available on our website. As a qualified donee, the organization will be eligible to issue official donation receipts and to receive gifts from registered charities. Should your organization choose to apply, a copy of this letter should be submitted with the application. For more information on the application process, please refer to our website at <http://www.cra-arc.gc.ca/chrts-gvng/qlfd-dns/mncplpblcbds-eng.html>.

Yours truly,

XXXXXXXXXXXX

Manager  
Non-Profit Organizations and Aboriginal Issues Section  
Business and Employment Division  
Income Tax Rulings Directorate  
Legislative Policy and Regulatory Affairs Branch