



**What every tribe,
corporation,
foundation, and
financial planner
should know about
charitable giving to
tribes and tribal
organizations.**

History

In 1982, Congress passed the **Indian Tribal Governmental Tax Status Act**, codified as Section 7871 of the Internal Revenue Code, treating **Tribal Governments** as State governments for a variety of specified tax purposes. One of these purposes was to allow Tribal Governments (and their political subdivisions) to receive **tax-deductible donations**.

Today

While some tribal programs access this benefit without receiving a letter ruling, others have found it helpful to have a letter ruling from the IRS to provide for potential donors as an assurance of tax-deductibility for their gifts. If a tribe was not listed in one of the Revenue Procedures published by IRS in 1983 and 1984, it is required to get a Private Letter Ruling. However, if the tribe is so listed, it depends on the facts and circumstances whether a unit of the tribe needs to get its own ruling.

The awareness level of **IRC 7871** in Indian Country and in the philanthropy world is varied. While some foundations, corporations and donors are familiar with the actual law, some simply know that **Indian Tribes are eligible** to receive tax-exempt contributions. Some may not understand the political subdivision aspect of the law (political subdivisions are determined by the power to tax, the power to police and the power of eminent domain). And some donors are unaware of the opportunity altogether.

More Native American tribes and their programs could **take advantage of this opportunity**. The utilization of this tax law opportunity will not only allow Indian Country to access "**mainstream**" **philanthropy** more easily, but it will help educate the broad range of people who interface with the philanthropy world about **tribal sovereignty**.

Key provisions for §7871

7871 offers many of the same tax benefits for donors as 501(c)(3) non-profits, for practical tax purposes, meaning



All donations to a 7871 tribe or organization are tax deductible, and



Foundations can make grants to such organizations.

Accountability

7871 organizations must establish their own accountability to their donors. The code specifically conditions deductibility on the gift being "for exclusively public purposes." Reporting requirements are not imposed by the Federal Government. IRC 7871 assumes that tribes, their political subdivisions, and tribal colleges will provide fiscal accountability for charitable contributions, as they manage all finances. However, it is important to donors that their contributions are documented and that fiscal procedures are transparent. It is required practice for 501(c)(3) organizations to acknowledge each donation in writing, to report fiscal activities by submitting reports to the state and federal governments (i.e., 990 Forms) and to forbid any substantial part (i.e., greater than 5 percent) of the organization's budget to contribute to lobbying activities (or any portion whatsoever to political contributions). Because donors are used to these requirements, they may be worth considering when creating a tribal restricted fund.

501(c)(3) vs. 7871

Most non-profits file for 501(c)(3) status through a state. Some tribal non-profits file for 501(c)(3) status through a tribe. In this case, the tribe takes the role of the state. Sometimes tribes choose to create a 501(c)(3) organization for programs that need to be a separate entity from the tribe. Otherwise, a tribe can set up a **restricted fund**, which can be reported upon in full, without reporting all aspects of the tribe's finances.

The maintenance of a 501(c)(3) organization includes specific supervision by the IRS through applications (Form 1023, initially) and reporting (Form 990, on an annual basis). By contrast, a 7871 organization is primarily accountable to its tribal council or governing board of the tribe. **A restricted fund is generally created through a resolution of the governing entity.** And as previously stated, it is the responsibility of that governing entity to establish procedures to manage these funds.

Whereas the term 501(c)(3) is currently better known in philanthropy, this brochure is an extension of a movement in Native American philanthropy to **elevate the awareness of IRC 7871.** The specific goal will be to incorporate "7871" into standard grant-giving guidelines among foundations, corporations and financial planning institutions.

Some current models



A community foundation established by local revenues. This organization can be utilized for the benefit of the tribal community and to make grants to outside organizations.



A tribe that receives grants for its own programs.



A tribal college that receives contributions for its own programs.



A tribal government and government entity can still be audited by the IRS



A tribe that utilizes its 7871 status and/or a 501(c)(3) organization.



A tribal subdivision that creates a restricted fund to receive donations for the benefit of the organization's purpose and to benefit Indian Country in general. This program both receives and distributes grants and donations.