

26 CFR Part 301

(LR-221-83)

Indian Tribal Governments Treated as
States for Certain Purposes; Proposed
Rulemaking

AGENCY: Internal Revenue Service,
Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: In the Rules and Regulations portion of this Federal Register, the Internal Revenue Service is issuing temporary regulations that relate to the treatment of Indian tribal governments as States for certain purposes. The text of those temporary regulations also serves as the comment document for this proposed rulemaking.

DATES: Written comments and requests for a public hearing must be delivered by July 6, 1984. The amendments are proposed to be effective generally for taxable years beginning after December 31, 1982, and before January 1, 1985.

ADDRESS: Send comments and requests for a public hearing to: Commissioner of Internal Revenue, Attention: CC:LR:T (LR-221-63), Washington, D.C. 20224.

FOR FURTHER INFORMATION CONTACT: Linda M. Kroening, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, D.C. 20224 (Attention: CC:LR:T) (202-566-3288) (not a toll-free call).

SUPPLEMENTARY INFORMATION:
Background

The temporary regulations in the Rules and Regulations portion of this issue of the Federal Register add Part 305 to Title 26 of the Code of Federal Regulations. The final regulations, which this document proposes to base on those temporary regulations, would amend Part 301 of Title 26 of the Code of Federal Regulations.

The regulations provide guidance with respect to the treatment of Indian tribal governments as States for certain purposes under sections 7701(a)(40) and 7871 of the Internal Revenue Code of 1954, as added to the Code by sections 202 and 203 of the Indian Tribal Governmental Tax Status Act of 1962 (Pub. L. 97-473, 96 Stat. 2808, 2811). The regulations are to be issued under the authority contained in section 7805 of the Internal Revenue Code of 1954 (88A Stat. 917, 26 U.S.C. 7805). For the text of the temporary regulations, see FR Doc. 84-12119 (T.D. 7952) published in the Rules and Regulations portion of this issue of the Federal Register. The preamble to the temporary regulations provides a discussion of the rules.

Special Analyses

The Commissioner of Internal Revenue has determined that this proposed rule is not a major rule as defined in Executive Order 12291 and that a Regulatory Impact Analysis is therefore not required.

Although this document is a notice of proposed rulemaking that solicits public comments, the Internal Revenue Service has concluded that the regulations proposed herein are interpretative and that the notice and public procedure requirements of 5 U.S.C. 553 do not apply. Accordingly, no Regulatory Flexibility Analysis is required by Chapter 6 of Title 5, United States Code.

Comments and Requests for a Public Hearing

Before adopting these proposed regulations, consideration will be given to any written comments that are submitted (preferably seven copies) to the Commissioner of Internal Revenue. All comments will be available for public inspection and copying. A public hearing will be held upon written request to the Commissioner by any person who has submitted written comments. If a public hearing is held, notice of the time and place will be published in the Federal Register.

The collection of information requirements contained in this notice of proposed rulemaking have been submitted to the Office of Management and Budget (OMB) for review under section 3504 (b) of the Paperwork Reduction Act. Comments on these requirements should be sent to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for Internal Revenue Service, New Executive Office Building, Washington, D.C. 20503. The Internal Revenue Service requests that persons submitting comments on these requirements to OMB also send copies of those comments to the Service.

Drafting Information

The principal author of these proposed regulations is Linda M. Kroening of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations, on matters of both substance and style.

List of Subjects in 26 CFR Part 301

Administrative practice and procedure, Bankruptcy, Courts, Crime, Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Investigations, Law enforcement, Penalties, Pensions, Statistics, Taxes.

Disclosure of information filing requirements Indian tribal governments.
Roscoe L. Egger, Jr.,
Commissioner of Internal Revenue

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DEPARTMENT OF THE TREASURY**Internal Revenue Service****26 CFR Part 305**

(T.D. 7952)

Temporary Procedural and Administrative Tax Regulations; Indian Tribal Governments Treated as States for Certain Purposes**AGENCY:** Internal Revenue Service, Treasury.**ACTION:** Temporary regulations.

SUMMARY: This document provides temporary regulations relating to the treatment of Indian tribal governments as States for certain purposes. Changes to the applicable tax law were made by the Indian Tribal Governmental Tax Status Act of 1982. The regulations provide guidance to Indian tribal governments that are treated as States for certain purposes. In addition, the text of the temporary regulations set forth in this document serves as the text of the proposed rulemaking in the Proposed Rules section of this issue of the Federal Register.

DATES: The regulations are generally effective for taxable years beginning after December 31, 1982, and before January 1, 1985.

FOR FURTHER INFORMATION CONTACT: Linda M. Kroening of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, D.C. 20224 (Attention: CC:LR:T) (202-566-3288) (not a toll-free call).

SUPPLEMENTARY INFORMATION:**Background**

This document contains temporary regulations relating to the treatment of Indian tribal governments as States for certain purposes under sections 7701 and 7871 of the Internal Revenue Code of 1954, as added to the Code by

sections 202 and 203 of the Indian Tribal Governmental Tax Status Act of 1982 (Pub. L. 97-473, 96 Stat. 2808, 2811). Further, a new Part 305, Temporary Procedural and Administrative Tax Regulations Under the Indian Tribal Governmental Tax Status Act of 1982, is added by this document to Title 26 of the Code of Federal Regulations. The temporary regulations will remain in effect until superseded by final regulations on this subject.

Explanation of Provisions

Generally, for taxable years 1983 and 1984, the regulations provide that an Indian tribal government may be treated as a State for certain Federal tax purposes. For purposes of the regulations, the governing body of a tribe, band, pueblo, community, village or group of Indians, or Alaska Natives, will qualify as an Indian tribal government upon a determination by the Internal Revenue Service that such governing body exercises governmental functions. Designation of a governing body as an Indian tribal government will be by revenue procedure. If a governing body is not currently designated by the applicable revenue procedure as an Indian tribal government, and such governing body believes that it qualifies for such designation, the governing body may apply for a ruling from the Internal Revenue Service. Such governing body will qualify as an Indian tribal government, for purposes of these regulations, only upon obtaining a favorable ruling from the Internal Revenue Service. The regulations provide instructions for applying for a ruling.

Similarly, a subdivision of a designated Indian tribal government may be treated as a political subdivision of a State for certain Federal tax purposes if the Internal Revenue Service determines that the subdivision has been delegated the right to exercise one or more of the substantial governmental functions of the Indian tribal government. Designation of a subdivision of an Indian tribal government as a political subdivision of a State will be by revenue procedure. If a subdivision of an Indian tribal government is not currently designated by the applicable revenue procedure as a political subdivision of a State, the subdivision may apply for a ruling from the Internal Revenue Service. Such subdivision of an Indian tribal government will qualify as a political subdivision of a State, for purposes of these regulations, only upon obtaining a

favorable ruling from the Internal Revenue Service.

The regulations set forth the sections of the Internal Revenue Code of 1954 under which designated Indian tribal governments and subdivisions of Indian tribal governments shall be treated as States or political subdivisions of States. In addition, special rules for excise tax exemptions and tax-exempt bonds are provided, including the requirement that an essential governmental function be exercised.

Special Analyses

The Treasury Department has determined that this temporary regulation is not subject to review under Executive Order 12291 or the Treasury and OMB implementation of the Order dated April 29, 1983. The notice of proposed rulemaking relating to the treatment of Indian tribal governments as States for certain purposes in the Proposed Rules section of this issue of the Federal Register describes the applicability of the Executive Order to both the proposed and final regulations.

No general notice of proposed rulemaking is required by 5 U.S.C. 553(b) for temporary regulations. Accordingly, the Regulatory Flexibility Act does not apply and a Regulatory Flexibility Analysis is not required for this rule.

The collection of information requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under section 3507 of the Paperwork Reduction Act. (Control No. 1545-0823)

Drafting Information

The principal author of these temporary regulations is Linda M. Kroening of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations, on matters of both substance and style.

List of Subjects in 26 CFR Part 305

Taxes, Indian tribal government.

Adoption of Amendments to the Regulations

Accordingly, a new Part 305, Temporary Procedural and Administrative Tax Regulations under the Indian Tribal Government Tax Status Act of 1982, is added to Title 26 of the Code of Federal Regulations, and the following temporary regulations are adopted:

Paragraph, Subchapter F of 26 CFR is amended by adding a new Part 305 to read as follows:

PART 305—TEMPORARY PROCEDURAL AND ADMINISTRATIVE TAX REGULATIONS UNDER THE INDIAN TRIBAL GOVERNMENTAL TAX STATUS ACT OF 1982

Sec.

305.7701-1 Definition of Indian tribal government.

305.7871-1 Indian tribal governments treated as States for certain purposes.

Authority: Section 7805 (58A Stat. 917, 26 U.S.C. 7805) Internal Revenue Code of 1954.

§ 305.7701-1 Definition of Indian tribal government.

(a) *Definition.* A governing body of a tribe, band, pueblo, community, village, or group of native American Indians, or Alaska Natives, qualifies as an Indian tribal government upon determination by the Internal Revenue Service that the governing body exercises governmental functions. Designation of a governing body as an Indian tribal government will be by revenue procedure. If a governing body is not currently designated by the applicable revenue procedure as an Indian tribal government, and such governing body believes that it qualifies for such designation, the governing body may apply for a ruling from Internal Revenue Service. In order to qualify as an Indian tribal government, for purposes of section 7701(a)(40) and this section, such governing body must receive a favorable ruling from the Internal Revenue Service. The request for a ruling shall be made in accordance with all applicable procedural rules set forth in the Statement of Procedural Rules (26 CFR Part 601) and any applicable revenue procedures relating to the submission of ruling requests. The request shall be submitted to the Internal Revenue Service, Associate Chief Counsel (Technical), Attention: CC:IND:S, room 6545, 1111 Constitution Avenue, NW., Washington, D.C. 20224.

(b) *Effective date.* The provisions of this section are effective after December 31, 1982.

§ 305.7871-1 Indian tribal governments treated as states for certain purposes.

(a) *In general.* An Indian tribal government, as defined in section 7701(a)(40) and the regulations thereunder, shall be treated as a State, and a subdivision of an Indian tribal government, as determined under section 7871(d) and paragraph (e) of this section, shall be treated as a political subdivision of a State, under the

following sections and regulations thereunder—

(1) Section 170 (relating to income tax deductions for charitable, etc., contributions and gifts), sections 2055 and 2106(a)(2) (relating to estate tax deductions for transfers of public, charitable, and religious uses), and section 2522 (relating to gift tax deductions for charitable and similar gifts), for purposes of determining whether and in what amount any contribution or transfer to or for the use of an Indian tribal government (or subdivision thereof) is deductible;

(2) Section 164 (relating to deductions for taxes);

(3) Section 511(a)(2)(B) (relating to the taxation of colleges and universities which are agencies or instrumentalities of governments or their political subdivisions);

(4) Section 37(e)(9)(A) (relating to certain public retirement systems);

(5) Section 41(c)(4) (defining "State" for purposes of credit for contributions to candidates for public offices);

(6) Section 117(b)(2)(A) (relating to scholarships and fellowship grants);

(7) Section 403(b)(1)(A)(ii) (relating to the taxation of contributions of certain employers for employee annuities);

(8) Chapter 41 of the Code (relating to tax on excess expenditures to influence legislation); and

(9) Subchapter A of chapter 42 of the Code (relating to private foundations).

(b) *Special rule for excise tax provisions.* An Indian tribal government shall be treated as a State, and a subdivision of an Indian tribal government shall be treated as a political subdivision of a State, for purposes of any exemption from, credit or refund of, or payment with respect to an excise tax imposed on a transaction under—

(1) Chapter 31 of the Code (relating to tax on special fuels);

(2) Chapter 32 of the Code (relating to manufacturers excise taxes);

(3) Subchapter B of chapter 33 of the Code (relating to communications excise tax); and

(4) Subchapter D of chapter 36 of the Code (relating to tax on use of certain highway vehicles), if, in addition to satisfying all requirements applicable to a similar transaction involving a State (or political subdivision thereof) under the Code, the transaction involves the exercise of an essential governmental function of the Indian tribal government as defined in paragraph (d) of this section.

(c) *Special rule for tax-exempt bonds.* An Indian tribal government shall be treated as a State and a subdivision of

an Indian tribal government shall be treated as a political subdivision of a State for purposes of any obligation issued by such government or subdivision under section 103 (relating to interest on certain governmental obligations) if such obligation is part of an issue substantially all of the proceeds of which are to be used in the exercise of an essential governmental function, as defined in paragraph (d) of this section. For purposes of section 7871 and this section, the "substantially all" test is the same as that provided in § 1.103-8(a)(1)(i). An Indian tribal government shall not be treated as a State and a subdivision of an Indian tribal government shall not be treated as a political subdivision of a State, however, for issues of the following private activity bonds—

(1) An industrial development bond (as defined in section 103(b)(2));

(2) An obligation described in section 103(l)(1)(A) (relating to scholarship bonds); or

(3) A mortgage subsidy bond (as defined in section 103A(b)(1), without regard to section 103A(b)(2)).

(d) *Essential governmental function.* For purposes of section 7871 and this section, an essential governmental function of an Indian tribal government (or portion thereof) is a function of a type which is—

(1) Eligible for funding under 25 U.S.C. 13 and the regulations thereunder;

(2) Eligible for grants or contracts under 25 U.S.C. 450 (f), (g), and (h) and the regulations thereunder; or

(3) An essential governmental function under section 115 and the regulations thereunder when conducted by a State or political subdivision thereof.

(e) *Treatment of subdivisions of Indian tribal governments as political subdivisions.* A subdivision of an Indian tribal government shall be treated as a political subdivision of a State for purposes of section 7871 and this section if the Internal Revenue Service determines that the subdivision has been delegated the right to exercise one or more of the substantial governmental functions of the Indian tribal government. Designation of a subdivision of an Indian tribal government as a political subdivision of a State will be by revenue procedure. If a subdivision of an Indian tribal government is not currently designated by the applicable revenue procedure as a political subdivision of a State, and such subdivision believes that it qualifies for such designation, the subdivision may apply for a ruling from

the Internal Revenue Service. In order to qualify as a political subdivision of a State, for purposes of section 7871 and this section, such subdivision must receive a favorable ruling from the Internal Revenue Service. The request for a ruling shall be made in accordance with all applicable procedural rules set forth in the Statement of Procedural Rules (26 CFR Part 601) and any applicable revenue procedures relating to submission of ruling requests. The request shall be submitted to the Internal Revenue Service, Associate Chief Counsel (Technical), Attention: CC:IND:S, Room 6545, 1111 Constitution Ave., NW., Washington, D.C. 20224.

(f) *Effective dates—(1) in general.* Except as provided in paragraph (f)(2) of this section, the provisions of this section are effective after December 31, 1982.

(2) *Specific effective dates.* Specific provisions of this section are effective as follows:

(i) Provisions relating to Chapter 1 of the Internal Revenue Code of 1954 (other than section 103 and section 37(e)(9)(A)) shall apply to taxable years beginning after December 31, 1982, and before January 1, 1985;

(ii) Provisions relating to section 37(e)(9)(A) shall apply to taxable years beginning after December 31, 1982, and before January 1, 1984;

(iii) Provisions relating to section 103 shall apply to obligations issued after December 31, 1982, and before January 1, 1985;

(iv) Provisions relating to chapter 11 of the Code shall apply to estates of decedents dying after December 31, 1982, and before January 1, 1985;

(v) Provisions relating to chapter 12 of the Code shall apply to gifts made after December 31, 1982, and before January 1, 1985; and

(vi) Provisions relating to taxes imposed by subtitle D of the Code shall take effect on January 1, 1983 and shall cease to apply at the close of December 31, 1984.

There is a need for immediate guidance with respect to the provisions contained in this Treasury decision. For this reason, it is found impracticable to issue it with notice and public procedure under subsection (b) of section 553 of Title 5 of the United States Code or subject to the effective date limitation of subsection (b) of that section.

This Treasury decision is issued under the authority contained in section 7805

of the Internal Revenue Code of 1954 (88A Stat. 917, 26 U.S.C. 7805)

Roscoe L. Egger, Jr.,

Commissioner of Internal Revenue.

Approved: April 18, 1984.

Ronald A. Pochmann,

Acting Assistant Secretary of the Treasury.

(FR Doc. 84-12718 Filed 4-24-84; 2:45 pm)

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