

Part III. Administrative, Procedural, and Miscellaneous

Application of Section 382 in the Case of Certain Acquisitions Made Pursuant to the Housing and Economic Recovery Act of 2008

Notice 2008-76

SECTION 1. OVERVIEW

This notice announces that the Internal Revenue Service (IRS) and the Treasury Department (Treasury) will issue regulations under section 382(m) of the Internal Revenue Code (Code) that address the application of section 382 in the case of certain acquisitions made pursuant to the Housing and Economic Recovery Act of 2008.

Pursuant to section 1117(a) and (b) of the Housing and Economic Recovery Act of 2008, Pub. L. No. 110-289 (2008), the Secretary of the Treasury is authorized to purchase any obligations and other securities issued by certain entities under the Housing and Economic Recovery Act of 2008. A purchase that is made pursuant to this authority is hereinafter referred to as a "Housing Act Acquisition."

SECTION 2. REGULATIONS TO BE ISSUED UNDER SECTION 382(m)

The IRS and Treasury will issue regulations under section 382(m) providing that notwithstanding any other provision of the Code or the regulations thereunder, for purposes of section 382 and the regulations thereunder, with respect to a corporation as to which there is a Housing Act Acquisition, the term "testing date" (as defined in § 1.382-2(a)(4)) shall not include any date on or after the date on which the United States (or any agency or instrumentality thereof) (United States) acquires, in a Housing Act Acquisition, stock (including stock described in section 1504(a)(4)) or an option to acquire stock in the corporation.

SECTION 3. EFFECTIVE DATE

The regulations to be issued under section 382(m) that are described in section 2 of this notice will apply on or after Septem-

ber 7, 2008, and will apply unless and until there is additional guidance.

26 CFR 601.201: Rulings and determination letters. (Also Part I. Sections 103(c), 105(e), 117(b)(2)(A), 164, 170, 403(b)(1)(A)(ii), 454(b)(2), 511(a)(2)(B), 2055, 2106(a)(2), 2522, 4041(g), 4216, 4253(i), 4483(a), 4911, 4940(c), 4941(d), 4942(f), 4945(f), 4946(c).)

Rev. Proc. 2008-55

SECTION 1. GENERAL

.01 PURPOSE

The purpose of this revenue procedure is to designate the Indian tribal entities that appear on the current or future lists of federally recognized Indian tribes published annually by the Department of the Interior, Bureau of Indian Affairs, as Indian tribal governments for purposes of section 7701(a)(40). Indian tribal governments are treated as States for certain purposes under section 7871(a).

.02 BACKGROUND

(1) Internal Revenue Code and Treasury Regulations. The Indian Tribal Governmental Tax Status Act of 1982 (Title II of Pub. L. No. 97-473, 1983-1 C.B. 510, 511, as amended by Pub. L. No. 98-21, 1983-2 C.B. 309, 315) added sections 7701(a)(40) and 7871 to the Code. Section 7871(a) provides that Indian tribal governments (or subdivisions thereof) will be treated as states for certain enumerated federal tax purposes. For example, charitable contributions to or for the use of a tribal government may be deductible under the federal income, gift, and estate tax laws; a tribal government is entitled to exemption from certain excise taxes; taxes imposed by a tribe may be deductible; and public activity bonds may be tax exempt obligations. §§ 7871(a)(1), (a)(3), (a)(4). As originally enacted in 1982, the provisions of section 7871 were temporary. These provisions were made permanent by section 1065 of the Tax Reform Act of 1984, Pub. L. 98-369, 1984-3 (Vol. 1) C.B. 556. Section 7701(a)(40) defines the term Indian tribal government to mean the governing body of any tribe, band, community, village, or group of Indians, or (if applicable) Alaska Natives, which is deter-

mined by the Secretary, after consultation with the Secretary of the Interior, to exercise governmental functions.

Temporary Regulation section 305.7701-1(a) provides that 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. The temporary regulation further provides that if a governing body is not currently designated by 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.

(2) Federally Recognized Indian Tribe List Act and Associated Regulations. Under the Federally Recognized Indian Tribe List Act of 1994, Pub. L. 103-454, 108 Stat. 4791 ("List Act"), the Secretary of the Interior is required to publish annually a list of all federally recognized Indian tribes. The list must reflect all of the tribes that the Secretary of the Interior recognizes to be eligible for the programs and services provided by the United States to Indians because of their status as Indians. 25 USC § 479a-1(b). The United States has a government-to-government relationship with and recognizes the sovereignty of recognized Indian tribes. List Act § 103(2). The Secretary of the Interior recognizes the entities on the list as Indian tribes with a government-to-government relationship with the United States. See 44 Fed. Reg. 7,235 (Feb. 6, 1979); 58 Fed. Reg. 54,364 (Oct. 21, 1993); and 60 Fed. Reg. 9,250 (Feb. 16, 1995). The government-to-government relationship of a tribe that is on this list may not be terminated except by an Act of Congress. List Act § 103(4).

The Department of the Interior publishes its list annually in the Federal Register. The most recent list was published in 73 Fed. Reg. 18,553 (April 4, 2008).

(3) Previous Revenue Procedures. The Internal Revenue Service has issued three

revenue procedures listing Indian tribal entities recognized as Indian tribal governments for purposes of section 7701(a)(40). *See* Rev. Proc. 83–87, 1983–2 C.B. 606; Rev. Proc. 2001–15, 2001–1 C.B. 465; Rev. Proc. 2002–64, 2002–2 C.B. 717. For each of the 2001 and 2002 revenue procedures, the Indian tribal entities listed were also the Indian tribes on the most recent annual list published by the Department of the Interior pursuant to the List Act.

SECTION 2. APPLICATION

.01 In general, an Indian tribal entity that appears on the most recent list published by the Department of the Interior in the Federal Register pursuant to the requirements of the List Act is designated an Indian tribal government for purposes of section 7701(a)(40). Tribal entities not appearing on the list that believe they qualify to be recognized as Indian tribes may contact the Office of Federal Acknowledgment in the Department of the Interior for information on how to apply for recogni-

tion pursuant to Department of the Interior procedures. Tribal entities not appearing on the list may apply for a ruling on whether they qualify as Indian tribal governments under section 7701(a)(40) pursuant to all applicable rules set forth in the Statement of Procedural Rules (26 CFR Part 601), and guidelines set forth in Rev. Proc. 84–37, 1984–1 C.B. 513, as modified by Rev. Proc. 86–17, 1986–1 C.B. 550, and Rev. Proc. 2008–1, 2008–1 I.R.B. 1.

.02 A tribe that does not appear on the most recent list published by the Department of the Interior in the Federal Register pursuant to the requirements of the List Act will nonetheless be treated as an Indian tribal government for purposes of section 7701(a)(40) if the tribe has been acknowledged as a federally recognized Indian tribe, as stated in a letter from the Department of the Interior.

.03 Qualification as an Indian tribal government does not necessarily establish that a tribe qualifies for a particular tax benefit. For example, when a tribal entity seeks exemption from excise taxes,

the entity must be able to demonstrate that the underlying transaction involves the exercise of an essential governmental function of the Indian tribal government. § 7871(b).

SECTION 3. EFFECT ON OTHER DOCUMENTS

Rev. Proc. 2002–64 is superseded.

SECTION 4. EFFECTIVE DATE

This revenue procedure is effective on the date of publication.

SECTION 6. DRAFTING INFORMATION

The principal author of this revenue procedure is Carol Cook of the Office of the Division Counsel/Associate Chief Counsel (Tax Exempt & Government Entities). For further information regarding this revenue procedure, contact Ms. Cook at (202) 622–1124 (not a toll-free call).