

LANGIND E
DOCNUM 2013-0488661R3
AUTHOR XXXXXXXXXX
DESCKEY 30
RATEKEY 2
REFDATE 13XXXX
SUBJECT Indian Band -Public Body & Function of Government
SECTION 149(1)(c)
SECTION
SECTION
SECTION
\$\$\$\$

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 XXXXXXXXXX a public body performing a function of government within the meaning of 149(1)(c) and therefore exempt from income tax on the interest income received from a GIC?

POSITION: Yes

REASONS: The Indian Band is governed by an elected chief and band council. The Indian Band performs several functions of government and has passed by-laws under section 83 of the Indian Act.

XXXXXXX

2013-048866

XXXXXXX, 2013

Dear XXXXXXXXX:

Re: Advance Income Tax Ruling Request – XXXXXXXXX

This is in reply to your letter of XXXXXXXXX, in which you requested an advance income tax ruling on behalf of the above-named taxpayer.

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
- (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.

DEFINITIONS:

In this letter unless otherwise expressly stated:

- a) "Band Council" has the meaning assigned to it in Paragraph 6;
- b) "CRA" means Canada Revenue Agency;
- c) "FNFSM Act" means First Nations Fiscal and Statistical Management Act, S.C. 2005, c.9;
- d) "GIC" has the meaning assigned to it in Paragraph 24;
- e) "Indian Act" means the Indian Act, R.S.C. 1985, c. I-5, as amended;
- f) "Members" has the meaning assigned to it in Paragraph 4;
- g) "Paragraph" refers to a numbered paragraph in this letter;
- h) "Reserve" means those lands identified as:

XXXXXXXXXX

and

- i) "Tribal Council" has the meaning assigned to it in Paragraph 5.

FACTS:

1. The XXXXXXXXXX is an Indian "band" as defined in subsection 2(1) of the Indian Act.
2. The XXXXXXXXXX has a "reserve" as defined in subsection 2(1) the Indian Act.
3. The XXXXXXXXXX is serviced by the XXXXXXXXXX Tax Services Office and files its returns with the XXXXXXXXXX Tax Centre. The XXXXXXXXXX's business identification number is XXXXXXXXXX.
4. The XXXXXXXXXX is comprised of approximately XXXXXXXXXX members (the "Members"), approximately XXXXXXXXXX% of which live on the Reserve. The balance of the Members live off the Reserve.
5. The XXXXXXXXXX is a member belonging to the XXXXXXXXXX (the "Tribal Council"), which represents XXXXXXXXXX First Nations members.
6. The XXXXXXXXXX is governed by a Chief and a XXXXXXXXXX person Council. The Chief and Council are elected democratically under band custom pursuant to Section 10 the Indian Act (the "Band Council"). The Band Council exercises control over the administration and development of the Reserve, represents the members of the XXXXXXXXXX in dealing with third parties, including the provincial and federal governments, and has the power to make by-laws in accordance with the Indian Act.
7. XXXXXXXXXX.
8. The XXXXXXXXXX has passed XXXXXXXXXX by-laws in accordance with section 83 of the Indian Act.
9. The XXXXXXXXXX has passed XXXXXXXXXX by-laws under subsection XXXXXXXXXX of the FNFSM Act.
10. The XXXXXXXXXX has received an order-in-council authorizing it to manage its own revenue moneys in accordance with section 69 of the Indian Act.
11. XXXXXXXXXX.
12. The XXXXXXXXXX has entered into the following agreements and arrangements with the government of Canada in respect of the XXXXXXXXXX's delivery of certain programs and services to the Members:
 - a) a Comprehensive Funding Agreement with the government of Canada to cover operational requirements and programs which are administered by the XXXXXXXXXX to its Members;
 - b) a Contribution Agreement and a Health Services Transfer Agreement with Health Canada in respect of health services programs delivered by the XXXXXXXXXX; and
 - c) XXXXXXXXXX.
13. In addition to entering into the foregoing arrangements with the government of Canada, the XXXXXXXXXX, directly or through the Tribal Council, has also entered into various agreements and arrangements with the provincial government of XXXXXXXXXX. These arrangements include: XXXXXXXXXX.
14. The XXXXXXXXXX provides the following programs and services to its Members:
 - a) health services;
 - b) family and community services;
 - c) social development and employment programs;
 - d) education;

- e) operation of community infrastructure services;
- f) financial and economic development;
- g) operation of communication infrastructure; and
- h) various capital projects.

The types of services and programs provided under the foregoing categories are further detailed below.

15. Under a Health Services Transfer Agreement, entered into with Health Canada, the XXXXXXXXXX administers its health programs to the Members. The health services provided by the XXXXXXXXXX include:

- a) doctor's office, including XXXXXXXXXX;
- b) dental care;
- c) targeted health programs, such as infant and child development and infant illness, immunizations and nursing clinics, nutrition, diabetic screening and mobile diabetes;
- d) communicable disease control programs;
- e) home support and community care;
- f) patient travel; and
- g) pre-and post-natal clinics.

16. The XXXXXXXXXX also provides and administers an extensive list of family and community services, including:

- a) community learning centre;
- b) cultural and linguistic programs;
- c) community and family wellness programs;
- d) young parent program;
- e) daycare and pre-school; and
- f) justice programs.

17. In addition to providing family and community services, the XXXXXXXXXX also provides a wide-range of services in respect of social development, employment and infrastructure for the Members including, but not limited to:

- a) social assistance;
- b) employment and education program;
- c) child benefit programs;
- d) Aboriginal Head Start on Reserve Program;
- e) youth and elder outreach;
- f) family support services;
- g) community water supply and maintenance;
- h) fire protection;
- i) maintenance of Reserve road system;
- j) maintenance of community buildings; and
- k) operation of communication infrastructure systems.

18. The XXXXXXXXXX also provides various educational services to the Members. For example, the XXXXXXXXXX administers and operates XXXXXXXXXX, a community school for students in nursery through to and including, Grade 12. The XXXXXXXXXX community school is situated on the Reserve. Additionally, for high school students, the XXXXXXXXXX offers XXXXXXXXXX. After school programing is also offered by the XXXXXXXXXX to the Members. Aside from elementary and secondary school services, the XXXXXXXXXX operates the XXXXXXXXXX, which is situated on the Reserve.

19. The financial and economic development services provided by the XXXXXXXXXX are extensive in nature and include;

- a) administration of property and commodity taxation;
- b) rehabilitation of residential properties on the Reserve;
- c) development of the Reserve lands;
- d) land leases;
- e) operation of XXXXXXXXXX;

- f) operation of a XXXXXXXXXX;
- g) participation in joint ventures; and
- h) business development.

20. In addition to the foregoing services, the XXXXXXXXXX also operates and administers various capital fund programs, including programs pertaining to residential housing and capital infrastructure improvements.

- 21. XXXXXXXXXX.
- 22. XXXXXXXXXX.
- 23. XXXXXXXXXX.

PROPOSED TRANSACTION:

24. It is proposed that the XXXXXXXXXX will purchase, with cash, a \$XXXXXXXXXX redeemable, renewable, guaranteed investment certificate (the "GIC") issued by XXXXXXXXXX. This GIC will earn interest at the rate of XXXXXXXXXX%.

PURPOSE OF THE PROPOSED TRANSACTION:

25. The purpose of the proposed transaction is to generate additional income for the XXXXXXXXXX to fund and support the governance, public works, infrastructure, social services and general development of the XXXXXXXXXX.

RULING GIVEN:

Provided that the preceding statements constitute a complete and accurate disclosure of all of the relevant facts, proposed transactions and purposes of the proposed transactions, we rule as follows: Because the XXXXXXXXXX is a public body performing a function of government in Canada within the meaning of paragraph 149(1)(c) of the Act, and therefore exempt from income tax under Part I of the Act, no tax will be payable under Part I of the Act by the XXXXXXXXXX on any interest from the GIC included in its income as a result of the proposed transaction described above.

The above advance income tax ruling, which is based on the Act and Regulations in their present form and does not take into account any proposed amendments thereto, is given subject to the general limitations and qualifications set out in the Information Circular 70-6R5, "Advance Income Tax Rulings", dated May 17, 2002, and is binding on the CRA provided that the proposed transaction is completed by XXXXXXXXXX.

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

Yours truly,

XXXXXXX
Manager
Non-Profit Organizations and Aboriginal Issues Section
Financial Sector and Exempt Entities Division
Income Tax Rulings Directorate
Legislative Policy and Regulatory Affairs Branch