

CHARITIES FUNDED BY OR FORMED TO SUPPORT INDIAN TRIBAL GOVERNMENTS

Current Law

Every Section 501(c)(3) charitable organization is treated as either a public charity or a private foundation. Public charity classification is generally based on an organization's sources of funding or support. It may also be based on whether the organization was formed to support a particular type of organization, such as a state or local government.

- While support from state and local governments is treated as "public support" for purposes of public charity classification, support from an Indian Tribal Government is not treated as support from a governmental entity.
- While organizations formed to support state and local governments are treated as "supporting organizations" for purposes of public charity classifications, the status of organizations formed to support Indian tribal governments is unclear.

Section 7871 does permit Indian tribal governments to receive tax deductible charitable contributions so long as they are used for exclusively public purposes.

Reasons for Change

The lack of parity between tribes and other governments under the public charity classification rules makes it difficult for Indian tribes to form and fund separate 501(c)(3) nonprofit organizations. As a result, tribal governments often operate foundations as unincorporated funds or divisions of the government. While such governmental charities can be effective if fully funded by the tribal government, they are not the most effective vehicles for leveraging tribal resources and raising additional charitable dollars from private foundations, corporations and individual donors. Both the House and Senate have addressed this issue in previous legislation, but for reasons unrelated to the merits of the proposal, corrective legislation has never been enacted. The proposal has been previously scored by Joint Tax Committee as involving a negligible impact on federal tax revenues.

Proposal

The proposal would do the following:

- (1) Treat tribal funding as public support for purposes of Section 170(b)(1)(A)(vi) (i.e., the public charity classification test that is satisfied on the basis of how much support a charity derives from "public" sources)
- (2) Treat charitable organizations formed to support Indian tribal governments the same as organizations formed to support state and local governments for purposes of Section 509(a)(3).