



# Federal Tax Status of Tribally Chartered Corporations

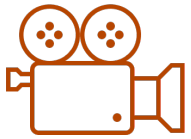
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December 12, 2024



# Housekeeping

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# Webinar on Federal Tax Status of Tribally Chartered Corporations

***Presenters:***

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**Holland & Knight**

# Agenda

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- ❑ Background and history of guidance on Tribal corporations
  - ❑ The Proposed Regulations
  - ❑ Comment opportunities
  - ❑ Questions raised by Treasury in Dear Tribal Leader Letter
  - ❑ Audience questions
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# Background

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# Tribal Law Corporations

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- ❑ The tax treatment of Tribal law corporations is a longstanding issue that may be resolved soon
  - ❑ Review of IRS guidance
  - ❑ Treasury Regulations
  - ❑ *Mescalero v. Apache*, 411 U.S. 145 (1973)
  - ❑ Revived efforts
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# IRS Guidance

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- ❑ Revenue Ruling 67-284 – Indian tribes are not taxable entities
  - ❑ Revenue Ruling 81-285 – Section 17 shares Tribe's tax status for on-reservation activities
  - ❑ Revenue Ruling 94-16 – Section 17 shares Tribe's tax status and is exempt from income for activities on or off the reservation
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# Treasury Regulations

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- ❑ 26 CFR 301.7701-1(a)(3) - 1996
  - ❑ Tribes incorporated under Section 17 or Section 3 (Oklahoma) are not recognized as separate entities
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# *Mescalero v. Apache*

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- ❑ Supreme Court cites legislative history
  - ❑ IRA's purpose was to rehabilitate economic life
  - ❑ IRA seeks to further give Tribes control of their own affairs and property
  - ❑ Sovereignty
  - ❑ Section 17 versus Section 16
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# Revived Efforts

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- ❑ 2001 – issue placed on IRS priority guidance plan
    - Guidance on corporations chartered under Indian tribal law
  - ❑ Various efforts over the years to get guidance issued
  - ❑ Inflation Reduction Act
  - ❑ Treasury Consultation on June 21 & 22, 2023
  - ❑ TTAC – September 16, 2024
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# The Proposed Regulations

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# Tribally Chartered Corporations

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- ❑ Proposed Regulations treat wholly owned, Tribally chartered corporations the same as a Section 17 corporation.
- ❑ The entity is disregarded for federal income tax purposes and shares the Tribe's tax-exempt status.
- ❑ Applies to entities owned by multiple Tribal governments.
- ❑ Does not apply to joint ventures with non-Tribal partners (subject of future guidance project).
- ❑ No integral part test or new reporting requirements.

# Tribally Chartered Corporations

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- ❑ Special rule for Inflation Reduction Act (IRC Section 6417) elective pay energy tax credits.
- ❑ Proposed Regulations permit wholly owned Tribal entities to register for and claim applicable clean energy credits.
- ❑ For this purpose, such entities are treated as instrumentalities of Tribal governments.

# Tribally Chartered Corporations

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- ❑ Tribally chartered entities generally may rely on the Proposed Regulations for prior years.
- ❑ Rules generally do not address LLCs.
  - ❑ However, under general tax principles, such entities are also disregarded (and would share Tribe's tax-exempt status) if wholly owned.

# Example

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- ❑ Tribe B incorporates Corporation X under Tribe B's laws. Tribe B owns all the shares of Corporation X.
  - ❑ Corporation X is not recognized as an entity separate from Tribe B for Federal tax purposes and is not subject to Federal income tax.
  - ❑ For purposes of making a Section 6417 election, Corporation X is treated as an instrumentality of Tribe B and is the "applicable entity."

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# **Comment Opportunities**

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# Comments are Important

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- Comments are important!
  - Why submit comments?
    - Opportunity to clear up ambiguities and unaddressed issues BEFORE guidance is finalized
    - Treasury and IRS are listening
    - Strength in numbers
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- ❑ Three virtual consultations on December 16, 17, and 18, 2024 (next week!)
  - ❑ Written comments due January 7, 2025
  - ❑ Public hearing on January 17, 2025 at IRS building in DC.
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# **Dear Tribal Leader Letter**

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# Treasury Questions

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- The Notice of Proposed Rulemaking (NPRM) provides Tribally chartered entities parity with Federally chartered corporations. What questions or comments do you have regarding this proposed rule?
  - The NPRM recognizes that Tribally chartered entities are not recognized as separate from their owning Tribe(s) for Federal tax purposes.
    - How should this impact employment and excise tax? Should Tribally chartered entities remain separate for excise and employment tax liability?
    - Should Tribally chartered entities be able to assert the excise tax benefits of their owning Tribes?
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# Treasury Questions

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- ❑ The NPRM contains examples describing how the proposed rule would operate. Do you have comments about these examples? Should the Department include more examples, and if so, what topics should be addressed?
  - ❑ The NPRM explains that Tribes may rely on these rules for tax years that precede the date of the NPRM except for limited circumstances. What questions or comments do you have regarding this reliance proposal?
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# Treasury Questions

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- The NPRM explains that these proposed rules do not address Tribally chartered corporations that are partially owned by persons other than Tribes and that additional guidance on this topic will be subject to Tribal consultation.
  - What questions or comments do you have about this statement in the NPRM?
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# Treasury Questions

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- ❑ The NPRM explains that Tribally chartered entities would be eligible for certain clean energy tax credits through elective pay. For the limited purpose of reducing administrative burdens, the NPRM would allow certain Tribal entities to be treated as an instrumentality of an Indian Tribal government.
    - What questions or comments do you have regarding this proposed rule?
  - ❑ What other questions or comments do Tribes have regarding this NPRM?
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# Join Us Next Week

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A promotional poster for a NAFOA event. The background is a light gray with a faint, abstract pattern. In the top left corner is the NAFOA logo. Below it, the time '2:00PM EASTERN TIME' is written in blue. The main title '2025 TRIBAL TAX LISTENING SESSION' is in large, bold, orange letters. Below the title, a paragraph of text describes the event. In the top right corner, an orange box contains the date 'DEC 19 2024'. In the bottom right corner, there is a QR code.

**NAFOA**

2:00PM EASTERN TIME

**2025 TRIBAL TAX  
LISTENING SESSION**

NAFOA invites Tribal leaders and members to a listening session to shape priorities and ensure Tribal voices are heard amid 2025's legislative changes

DEC  
**19**  
2024



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