

Rev. Rul. 94-81, 1994-52 I.R.B. 16, 1994-2 C.B. 412, 1994 WL 709939 (IRS RRU)

Internal Revenue Service (I.R.S.)

Revenue Ruling

APPLICATION OF EXCISE TAXES TO INDIAN TRIBAL GOVERNMENTS

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Section 7871.-Indian Tribal Governments Treated as States for Certain Purposes, [26 CFR 305.7871-1](#): Indian tribal governments treated as states for certain purposes.

(Also §§ 4081, 4161, 4401, 4411; 48.4081-1, 48.4161(a)-1, 48.4161(b)-1, 44.4401-1, 44.4411-1.)

Application of excise taxes to Indian tribal governments. Indian tribal governments have no inherent exemption from federal excise taxation, but section 7871 of the Code provides them with a limited exemption from certain excise taxes.

This revenue ruling discusses the extent to which various federal excise taxes apply to Indian tribal governments. The revenue ruling provides several examples that illustrate the application of the taxes to various situations, and the appendix to the ruling provides a summary of the federal excise tax treatment of Indian tribal governments.

Indian tribal governments have no inherent exemption from federal excise taxes. Federated [Tribes of the Warm Springs Reservation of Oregon v. Kurtz, 691 F.2d 878 \(9th Cir.1982\)](#) (holding that Indian tribes are not exempt from federal excise tax), cert. denied, [460 U.S. 1040 \(1983\)](#). Thus, absent a specific statutory exemption, Indian tribal governments must purchase taxable articles or services on a tax-paid basis and must pay tax on their sale or use of taxable articles or services.

[Section 7871\(a\)\(2\) of the Internal Revenue Code](#) provides that an Indian tribal government shall be treated as a state, subject to [§ 7871\(b\)](#), for purposes of any exemption from, credit or refund of, or payment with respect to, an excise tax imposed by:

- (A) chapter 31 (relating to tax on special fuels),
- (B) chapter 32 (relating to manufacturers excise taxes),
- (C) subchapter B of chapter 33 (relating to communications excise tax), or
- (D) subchapter D of chapter 36 (relating to tax on use of certain highway vehicles).

[Section 7871\(b\)](#) provides that [§ 7871\(a\)\(2\)](#) shall apply with respect to any transaction only if, in addition to any other requirement of title 26 applicable to similar transactions involving a state or political subdivision thereof, the transaction involves the exercise of an essential governmental function of the Indian tribal government.

[Section 7871\(c\)](#) provides that for purposes of [§ 7871](#), the term "essential governmental function" does not include any function that is not customarily performed by state and local governments with general taxing powers.

The following examples illustrate the application of federal excise taxes to Indian tribal governments.

Example 1-(i) Facts. S is a federally recognized Indian tribe. The tribal government of S purchases gasoline and diesel fuel for use in school buses, police cars, and fire trucks.

(ii) Analysis. Section 4081 (a part of chapter 32) imposes a tax on gasoline and diesel fuel. Sections 6416 and 6427 provide methods under which gasoline and diesel fuel that were subject to tax may be sold to state or local governments free of tax. The gasoline wholesale distributor or the diesel fuel ultimate vendor may sell the fuel tax free and claim a credit or payment equal to the tax previously imposed.

Providing school, police, or firefighting services is an essential governmental function within the meaning of [§ 7871\(b\)](#) that is customarily performed by state and local governments with general taxing powers, and the purchases of gasoline and diesel fuel for use by the tribal government of S in providing those services is in furtherance of those governmental functions. With respect to those activities, the tribal government of S is treated as a state under [§ 7871\(a\)\(2\)](#) for purposes of the taxes imposed under chapter 32. Therefore, gasoline wholesale distributors and diesel fuel ultimate vendors may sell the fuel tax free to the tribal government of S for those purposes and claim a credit or payment under §§ 6416(a)(4) and 6427(l) equal to the tax previously paid.

Example 2-(i) Facts. T is a federally recognized Indian tribe. The tribal government of T purchases gasoline and diesel fuel for resale at a retail service station located on Indian lands.

(ii) Analysis. There is no exemption that would allow a state (or an Indian tribal government) to purchase fuel tax free for resale to consumers. Therefore, gasoline wholesale distributors and diesel fuel ultimate vendors may not sell the fuel tax free to the tribal government of S for resale to consumers or claim a credit or payment equal to the tax previously paid.

Example 3-(i) Facts. U is a federally recognized Indian tribe. The tribal government of U manufactures and sells archery and sport fishing equipment to a sporting goods company. The equipment is manufactured to the sporting goods company's specifications and includes articles subject to federal excise tax, such as compound and recurve target and hunting bows, arrows with graphite or fiberglass shafts, fishing rods, and artificial lures.

(ii) Analysis. Section 4161 (a part of chapter 32) imposes taxes on the sale by the manufacturer, producer, or importer of certain sporting goods, including bows, arrows, fishing rods, and artificial lures. Section 4221(a)(4) provides that no manufacturers excise tax shall be imposed under § 4161 on the sale to a state or local government for the exclusive use of a state or local government.

Under [§ 7871\(a\)\(2\)](#), Indian tribal governments are to be treated as states for purposes of exemption from, credit or refund of, or payment with respect to, the tax imposed on archery and fishing equipment under § 4161. The exemption for states from taxes imposed under chapter 32 applies only to sales to states for their exclusive use. However, a state would not be exempt from tax on its sales of taxable archery and fishing equipment of its manufacture. See [State of New York v. United States, 326 U.S. 572 \(1946\)](#) (federal excise tax on the sale of mineral water was constitutionally valid as applied to sales of water from Saratoga Springs by the State of New York). Therefore, the tribal government of U is subject to manufacturers excise tax on its sales of taxable sporting goods.

Example 4-(i) Facts. V is a federally recognized Indian tribe. The tribal government of V owns and operates (either directly or through a management company) a casino that is

open to the general public. As part of the casino's gaming activities, it conducts a lottery and pull-tab operation.

(ii) Analysis. Section 4401(a)(1) (a part of chapter 35) imposes an excise tax equal to 0.25 percent of the amount of the wager on any wager authorized under the law of the state in which accepted. Section 4411(a) (also a part of chapter 35) imposes a special tax to be paid by each person who is liable for the tax imposed under § 4401(a)(1) or who is engaged in receiving wagers for or on behalf of any person so liable. Section 4402(3) provides that no tax shall be imposed by this subchapter on any wager placed in a sweepstakes, wagering pool, or lottery that is conducted by an agency of a state acting under authority of state law, but only if the wager is placed with the state agency conducting the sweepstakes, wagering pool, or lottery, or with its authorized employees or agents.

Section 4421 provides that the term "wager" means any wager with respect to a sports event or a contest placed with a person engaged in the business of accepting the wagers, any wager placed in a wagering pool with respect to a sports event or a contest, if the pool is conducted for profit, and any wager placed in a lottery conducted for profit. The term "lottery" includes the numbers game, policy, and similar types of wagering. The term does not include any game of a type in which usually the wagers are placed, the winners are determined, and the distribution of prizes or other property is made, in the presence of all persons placing wagers in the game. See [Rev. Rul. 57-258, 1957-1 C.B. 418](#), which holds that a pull-tab game is a form of lottery.

The taxes imposed under chapter 35 are not included under [§ 7871\(a\)\(2\)](#) and, therefore, Indian tribal governments are not treated as states under [§ 7871](#) with respect to wagering taxes. Thus, even though a wager placed with a lottery conducted by a state agency operating under state law would not be subject to tax, a wager placed with a lottery conducted by the tribal government of V is subject to tax. The holding of this example is not affected by § 20(d) of the Indian Gaming Regulatory Act, [25 U.S.C. § 2719\(d\)](#), which provides that Indian tribes shall be treated as states for purposes of reporting and withholding taxes on winnings from gaming activities.

ADDITIONAL TAXES

For the income tax treatment of Indian tribal entities, see [Rev. Rul. 94-16, 1994-1 C.B. 19](#).

DRAFTING INFORMATION

The principal author of this revenue ruling is Edward Madden of the Office of the Assistant Chief Counsel (Passthroughs and Special Industries). For further information regarding this revenue ruling, contact Mr. Madden on (202) 622-3130 (not a toll-free call).

Appendix to Rev. Rul. 94-81

Summary of the federal excise tax treatment of Indian tribes under IRC section 7871(a)(2) and other provisions ^{FN[FN1]}

Code Section(s)	Application to States	Application to Indian Tribes
4001	No categorical exemption.	Same as states, but

	Exemption for exclusive use in police, firefighting, search and rescue, or other law enforcement or public safety activities, or public works activities. § 4001(d).	limited to essential governmental functions.
Tax on Luxury Vehicles 4041, 4081, 4091	No tax on sales for the exclusive use of a state (accomplished by tax-free sale or by refund). §§ 4041(g)(2), 6416(a)(4) and (b)(2), 6427(l). Sales or resales by state for non-exempt uses are subject to tax.	Same as states, but limited to essential governmental functions.
Taxes on Special Fuel, Gasoline, Diesel Fuel, Aviation Fuel, and Compressed Natural Gas 4042	Exempt. § 4042(c)(3).	Same as states, but limited to essential governmental functions.
Tax on Fuel Used in Commercial Transportation on Inland Waterways 4051	No tax on sales for the exclusive use of a state (accomplished by tax-free sale or by refund). §§ 4221(a)(2), 6416(b)(2). Sales to a state under a resale agreement may be subject to tax.	Same as states, but limited to essential governmental functions.
Retail Tax on Heavy Vehicles 4064	No categorical exemption, but certain vehicles sold for use and used by states for law enforcement or emergency purposes are exempt. § 4064(b)(1)(C).	Same as states, but limited to essential governmental functions.
Tax on Gas Guzzler Automobiles 4071	No tax on sales for the exclusive use of a state (accomplished by tax-free sale or by refund). §§ 4221(a)(2), 6416(b)(2).	Same as states, but limited to essential governmental functions.
Tax on Heavy Tires 4121	No exemption. § 4221(a).	No exemption.

Tax on Coal		
4131	No exemption. § 4221(a).	No exemption.
Tax on Vaccines		
4161	No tax on sales for the exclusive use of a state (accomplished by tax-free sale or by refund). §§ 4221(a)(2), 6416(b)(2).	Same as states, but limited to essential governmental functions.
Tax on Sport Fishing Equipment and Bows and Arrows		
4181	No tax on sales for the exclusive use of a state (accomplished by tax-free sale or by refund). §§ 4221(a)(2), 6416(b)(2).	Same as states, but limited to essential governmental functions.
Manufacturers Tax on Firearms. ^{FN[FN2]}		
4251	No tax is imposed on any amount paid for communications facilities or services furnished to a state. § 4253(i).	Same as states, but limited to essential governmental functions.
Tax on Communications		
4261, 4271	No exemption.	No exemption.
Tax on Air Transportation of Persons or Property		
4371	Policies issued to states are taxable, but if issued in the exercise of an essential governmental function the state is not liable. Rev. Rul. 56-259, 1956-1 C.B. 530.	No comparable exemption.
Tax on Foreign Insurance		
4401, 4411	No categorical exemption. Specific exemption for state conducted lotteries. § 4402(3).	No exemption for tribal governments as such, but specific classes of wagers (for example, para-mutual wagers) may be exempt. § 4402(1).
Wagering and Occupational Taxes		
4461	No categorical exemption, but an exemption is provided for ferries. § 4462(a)(4).	Same as states.
Harbor Maintenance Tax ^{FN[FN3]}		
4471	No tax on any voyage on any vessel owned or operated by	No comparable exemption.

	a state. § 4472(1).	
Tax on Transportation by Water		
4481	Exempt. § 4483(a).	Same as states, but limited to essential governmental function.
Heavy Vehicle Use Tax		
4611	No exemption.	No exemption.
Tax on Petroleum		
4661	No exemption.	No exemption.
Tax on Certain Chemicals		
4671	No exemption.	No exemption.
Tax on Certain Imported Substances		
4681	No exemption.	No exemption.
Tax on Ozone-depleting Chemicals		
5001, 5041, 5051	No exemption	No exemption.
Taxes on Distilled Spirits, Wine and Beer ^{FN[FN2]}		
5081, 5091, 5111, 5121	No exemption, but limitation on number of special taxes required to be paid.	No exemption.
Occupational Taxes on Manufacture and Sale of Liquors ^{FN[FN2]}		
5701	No exemption.	No exemption.
Taxes on Tobacco Products ^{FN[FN2]}		
5731	No exemption.	No exemption.
Occupational Taxes on Manufacturers of Tobacco Products, Cigarette Papers and Tubes, and on Export Warehouse Proprietors ^{FN[FN2]}		
5801, 5811, 5821	No tax on the transfer of a firearm to, or making of a firearm by or for, a state. § 5823.	No comparable exemption.
Taxes on Machine Guns, Destructive Devices, and Certain Other Firearms ^{FN[FN2]}		
FN1. This summary does not address any of the excise taxes under chapters 39, 41, 42, 43, 44, 46, or 47.		
FN2. Administered by the Bureau of Alcohol, Tobacco, and Firearms.		
FN3. Administered by the U.S. Customs Service.		

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