



Charitable and Sovereign:

Understanding Tribal
7871 Organizations



Native Assets Research Center
Research Report 2009-2B





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The following material is not intended, nor should it be construed, as legal advice but rather as an introduction to the field of philanthropy. The services and advice of a lawyer, especially within the areas of tax and tribal law, are essential and highly recommended if/when implementing any of the philanthropic initiatives in this report.

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I. INTRODUCTION

Over 20 years ago, four tribes came together to establish a not-for-profit charitable organization to help implement a tribal salmon restoration plan in the northwestern United States. Using the sovereign rights of their organization, the Columbia River Intertribal Fish Commission established the Spirit of the Salmon Fund as a so-called “7871 organization.” Yet over 20 years later, they still face a constant challenge raising funds from private and federal donors who are not familiar with their tax status and are unaware that the Spirit of the Salmon Fund can receive donations that are deductible to the donor and count as qualifying distributions for foundations.

Tribal government leaders have many options available to them when forming a charitable organization. Some tribes incorporate a nonprofit corporation under state law and then apply for 501(c)(3) status from the IRS. This approach, however, opens the charitable organization to regulation by the state government and the federal government, and many tribes are uncomfortable with this fact. A second approach is to incorporate a nonprofit corporation under tribal law. Several tribes have passed tribal corporation codes that allow them to incorporate nonprofits under their tribal law, which avoids regulation by the state. The IRS does grant 501(c)(3) status to tribally incorporated nonprofit corporations, and many tribes are taking this route when establishing a charitable organization. A third and increasingly common route is for tribes to establish a fund, program, or subdivision that is designed to perform charitable activities. This type of charitable organization, which is a part of the tribal government, is often termed a 7871 organization.

The emergence of 7871 organizations represents an opportunity for tribal governments to manage philanthropic grant funds for local community development. Given the close connection of 7871 organizations to tribal communities, these organizations are more likely to be familiar with community needs and have developed innovative means to provide for these needs. Unfortunately, these organizations face great challenges as they try to raise grant funds from outside donors, including foundations, federal government grant sources, and individuals. In many instances, mainstream philanthropy has difficulty grasping the specific legal nature of 7871 organizations. In addition to fundraising challenges, 7871 organizations must contend with other misconceptions about their legal structure. This includes a lack of understanding of their specific governance and oversight structures.

The purpose of this report is to shed light on 7871 organizations, or charitable organizations that are formed as part of a tribal government. This paper draws upon a national survey and five case studies to provide examples of the opportunities and challenges facing these organizations, and to identify best practices and lessons learned. Furthermore, this report provides an overview of their various institutional structures and programmatic areas, and highlights the benefits and methods of giving to 7871 organizations.



II. WHAT IS A 7871 ORGANIZATION?

In 1982 Congress passed the *Indian Tribal Governmental Tax Status Act*. This legislation, codified as Internal Revenue Code (IRC) Section 7871, treats tribal governments as state governments for certain tax purposes. It allows tribal governments, their political subdivisions, or any tribal governmental fund, entity or program that is an integral part of a tribal government to receive tax-deductible donations. Donations to such entities are deductible by the individual donor for income tax purposes and also count as qualifying distributions for foundations.

To qualify for the tax benefits of IRC Section 7871, a tribal government must be recognized by the Department of the Treasury in consultation with the Department of the Interior as an entity that exercises sovereign powers – in other words, be a federally recognized tribe. A fund, program, or division of the tribal government that is applying for Section 7871 recognition must be a part of a political subdivision of a federally recognized tribal government with the power to exercise one of three sovereign powers: 1) the power to tax; 2) the power to police; or 3) the power of eminent domain. The division of the tribal government must also be a political subdivision designed exclusively for public purposes.

Advantages of IRC Section 7871 Status

IRC Section 501(c)(3) allows a nonprofit corporation to obtain tax-exempt status as a charitable organization. IRC Section 7871 treats Indian tribes like states for most federal tax purposes, including determining whether and in what amount a contribution to a tribal government is deductible as a charitable contribution. Because charitable donations to federally recognized tribal governments are tax deductible for the donor (as are donations to state and local governments), once a tribal charitable program is recognized as a Section 7871 organization, donations to it are tax deductible.

Although federally recognized tribal governments are the primary intended beneficiaries of Section 7871, there are two other governmental units that can also qualify for such benefits:

- Tribal political subdivisions.
- “Integral parts” of tribal governments and their subdivisions.

A political subdivision is a unit of the government that has been delegated one or more sovereign powers, such as the power to tax. In order to be recognized as such for Section 7871 purposes, it is advised that the subdivision utilize the IRS private letter ruling process to receive a determination that it is indeed a political subdivision of the tribal government. As part of the private ruling process, the IRS looks to the Department of the Interior for assurance that the entity has been delegated the requisite sovereign power(s).

ISA 7871

The IRS has not published formal guidance on qualifying as an “integral part” of an Indian tribal government and this issue is still under review. Based on a series of private letter rulings issued under Section 7871, there appear to be several relevant factors in defining an “integral part” of an Indian tribal government:

- i. The entity is not separately incorporated under state law.
- ii. The tribal government exerts a substantial degree of control over the entity.
- iii. The tribal government is liable for the acts of the entity.
- iv. The entity is essentially an operating unit or agency of the tribal government.
- v. The tribal government has made a substantial financial commitment to the entity.

It is important to note that the IRS has never required that “integral part” entities secure an IRS private letter ruling, but many tribes have done so in order to be certain of their tax benefits and to reassure donors.

To qualify for the tax benefits of IRC Section 7871, a tribal government must be:

- Recognized by the Department of the Treasury, in consultation with the Department of the Interior, as an entity that exercises sovereign powers.

A fund, program, or division of the tribal government that is applying for Section 7871 recognition must be:

- Part of a political subdivision of a tribal government with the power to exercise one of three sovereign powers:
 1. The power to tax;
 2. The power to police; or
 3. The power of eminent domain; and
- A political subdivision designed for exclusively public purposes.



There are several benefits to operating a Section 7871 charitable organization, including:

- An IRC 7871 entity is generally not separately incorporated like most 501(c)(3)s. This means a 7871 is generally not subject to applicable state law, whereas a 501(c)(3) entity, created under state law (rather than tribal law), is subject to state laws and regulation.
- An IRC Section 7871 organization can be structured as a tribally controlled fund, agency, or committee and therefore it is a more flexible form than a charitable corporation.
- An IRC Section 7871 organization is not subject to annual reporting requirements, charitable substantiation and disclosure rules, or the Unrelated Business Income Tax (UBIT) rules that apply to IRC Section 501(c)(3) organizations. However, most philanthropic donors require some form of reports and accountability before they will donate to a 7871 organizations, and most 7871 organizations self-impose practices that require reporting because they recognize the need to remain accountable to donors.

Disadvantages of IRC Section 7871 Status

There are some issues that need to be considered by tribes anticipating creating an IRC Section 7871 organization, including the following:

- Contributions made to IRC Section 7871 entities must be used for exclusively “public purposes” – a term that is not yet clearly defined in case law and rulings.
- All foundations that provide donations to the organization will require reporting and accountability for funding expenditures and many will require an outside audit – whether or not IRC Section 7871 requires such an audit.
- There may be a lack of separation of the tribal government from the program, and the organization may be subject to tribal politics as a result.
- Some private foundations are still hesitant to make donations to governmental entities, including tribal entities with Section 7871 status, because they have not been educated about the tax-deductible nature of their donations.

A Note About the Treatment of Private Foundation Grants

When a governmental unit applies for a grant from a private foundation, it is sometimes asked to provide proof of its tax status because of certain restrictions on private foundations imposed by the IRS Code. These restrictions are set forth in subchapter A of Chapter 42 of the Internal Revenue Code (i.e., Code Sections 4940-4948). One such restriction imposes an excise tax on a private foundation if it fails to make sufficient “qualifying distributions.” Under Section 4942 of the Code, private foundations must distribute certain amounts for charitable purposes each year - so-called “qualifying distributions” - or incur an excise tax on the undistributed amount. “Qualifying distributions” include certain amounts paid to accomplish charitable purposes.

Based on IRS regulations interpreting the private foundation excise taxes, private foundation grants made to states and municipalities constitute “qualifying distributions” even where the state or local government entity does not have Section 501(c)(3) status. Section 7871(a)(7)(B) of the Code specifies that an Indian Tribal Government shall be treated as a state for purposes of Subchapter A of Chapter 42 of the Code. However, because Section 7871 was enacted after the regulations under Sections 4942 were promulgated, a question has arisen whether these same rules apply to Indian Tribal Governments. The IRS has not published any formal guidance on this particular issue. However, the IRS has reached a similar legal conclusion in a General Information Letter issued by the IRS on September 9, 1998 to First Nations Development Institute (the First Nations letter).¹

This letter reaches conclusions strikingly similar to a sample General Information Letter issued to state governments and published in the Internal Revenue Manual.² The First Nations letter starts with the premise that a qualified Indian Tribal Government - i.e., one which has been recognized by the Secretary of the Treasury as exercising sovereign powers - is treated as a state for the purposes specified in Section 7871. As stated above, Section 7871(a)(7)(B) of the Code specifies that an Indian Tribal Government shall be treated as a state for purposes of Chapter 42 of the Code (which includes Section 4942). Because private foundation grants made to states and their political subdivisions are treated as qualifying distributions, the First Nations letter concludes that foundation grants made to Indian Tribal Governments for public purposes should also be treated as qualifying distributions.³

Even though a General Information Letter is not a formal IRS ruling, the First Nations letter confirms that reliance on Section 7871 in establishing charitable and philanthropic tribal entities as potential recipients of both charitable contributions and private foundation grants is not misplaced. Where a tribe (including a political subdivision or integral part of such tribe) has been recognized as a qualified Indian Tribal Government, the same treatment that is extended to states with respect to private foundation grants and charitable contributions should be extended to such entities.

¹ Letter of Mr. Thomas Miller (Chief, Exempt Organizations Project Branch 1, Internal Revenue Service) to Ms. Rebecca Adamson (President, First Nations Development Institute) (Sept. 8, 1998).

² Sample General Information Letter Regarding Instrumentalities (Exempt Organization Handbook), Internal Revenue Manual, MT-7151-51.

³ The First Nations letter applies the same analysis to the issue of whether grants to Indian tribal governments constitute “taxable expenditures” under Section 4945 of the Code and concludes that they do not.

III. STUDY METHODOLOGY

The purpose of this research project is to produce new data about the existence of 7871 organizations, their various institutional structures and programmatic areas, and to highlight benefits and methods of giving to 7871 organizations. A parallel goal is to identify lessons learned and promising practices.

Technically, all federally recognized tribal governments, and any tribally established fund, program, or subdivision that is an integral part of a tribal government and is designed to perform charitable activities⁴ for exclusively public purposes is covered under section 7871 of the IRS code and can be considered a “7871 organization.” This means that tribal departments of education, housing, or economic development could all technically be described as 7871 organizations. However, very few of these organizations solicit donations from private or public sources using the 7871 designation; most receiving their funding from the tribal or federal government through tribally designated funding sources. Therefore, very few tribal government programs self-identify as 7871 organizations.

First Nations Development Institute has been collecting data on 7871 charitable organizations for several years. First Nations has a database of 7871 charitable grant making organizations that has been compiled from secondary source review, news reports, internet research, and interviews with program managers. This previous research identified 16 tribal charitable organizations that fit the definition of a 7871 charitable organization. However, only three of these organizations are actively fundraising. The remainder are funded by tribal enterprises or from other tribal sources and function as grant making entities that do not engage in fundraising.

For this report, First Nations Development Institute issued a call for proposals to participate in the 7871 Research Initiative during the fall of 2008. The call for proposals clearly stated the goals of the Research Initiative and outlined the rights and expectations of participants in the study. The goal of the research project was identified as generating data about the existence of 7871 organizations, their various institutional structures and programmatic areas, and highlighting benefits and methods of giving to 7871 organizations. A secondary goal was to produce a report that provides an overview of the issues faced by 7871 organizations, with a mission of educating the mainstream philanthropic community.

⁴ IRC Section 501 states that “Corporations, and any community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific testing for public safety, literary, or educational purposes....” is exempt from taxation. Tribal governments provide most of these services through their departments, programs, and activities.

METHOD

The notice of the call for proposals was distributed on several listservs and at Native philanthropy events in order to maximize outreach and distribution. The call for proposals stated that up to five participants would be selected and they would be eligible to receive small grants of \$5,000 to \$10,000 to offset the costs associated with participation in the study. The goal was for this call for proposals to function as a national survey of tribal charitable 7871 organizations. The call for proposals yielded the names of several new 7871 tribal charitable organizations that are actively fundraising and have unique experiences to share regarding working with foundation funders, federal grant programs, and the general public.

Five applicants to the 7871 Research Initiative were selected to receive small grants and to participate in a structured interview process regarding their experiences as 7871 organizations, their legal and organizational structures, and their programmatic areas. They were also asked questions about best practices and lessons learned. These interviews took place during the spring of 2009. The results of these interviews are presented in this report.

Drawing upon the list of federally recognized tribes, the First Nations database of 7871 organizations, and the results of the call for participation in the 7871 Research Initiative, we estimate that there are at least six hundred 7871 organizations in existence. Of these six hundred, however, only approximately 20 are actively fundraising as tribal charitable organizations. Additional details on these organizations are provided below.



IV. RESEARCH FINDINGS

Based on our interviews with five 7871 organizations, as well as a review of secondary source material, we present the following research findings.

1. *There are a Large Number of 7871 Organizations, but Only a Small Number Have Been Actively Fundraising.*

According to our research, there are at least six hundred 7871 organizations in existence. This includes the over 560 federally recognized tribes (and Alaska Native Villages) as well as additional tribal charitable programs. Of these six hundred, however, only approximately 20 are actively fundraising and soliciting outside donations as tribal charitable organizations. This is most likely due to the fact that the majority of tribal government programs receive funding from federal or tribal funding sources and have not yet begun to seek funds from private sources or nontraditional federal grant programs. However, as federal funding for tribal programs continues to decline, and as tribes wish to move away from dependence on often unreliable and bureaucratically burdensome federal funding sources, more tribes and tribal programs may begin to seek funding from private donors or nontraditional federal funding sources. It is likely that more tribal programs will begin to engage in fundraising and self-identify as 7871 organizations over the next few decades.

2. *There is Great Programmatic and Organizational Diversity Among 7871 Organizations.*

There appears to be great programmatic and organizational diversity among the 7871 charitable organizations that are actively fundraising. The 20 organizations that are actively soliciting funds using their 7871 status have a range of charitable missions (see Table 1 for some examples). This reflects the diversity in the types of programs sponsored by tribal governments. We identified several 7871 organizations that promote educational attainment for tribal members, three organizations that function as community development financial institution (CDFI) loan funds, and several that promote economic development in the local community.

Even more interesting is the fact that there is currently great organizational diversity among 7871 organizations, with several different institutional structures being employed by the groups. Some organizations function as a closely integrated tribal fund or program, and others function as separate, stand alone programs with a separate board of directors. Because the IRS has not issued a ruling on the “integral part” test as it relates to Section 7871 (indicating what constitutes an integral part of a tribal government), very few 7871 organizations have a private letter ruling from the IRS indicating whether they meet the integral part test under Section 7871. However, each organization has been careful to create its 7871 charitable organization by following the guidelines of Section 7871 of the IRS code to the best of its ability. Most 7871 organizations have been purposefully created by tribal ordinances which outline the organization’s mission, goals, and governance structure.

RESEARCH FINDINGS

Table 1: Examples of 7871 Tribal Charitable Organizations

	Mission	Tribe(s) Served
Spirit of the Salmon Fund for the Columbia River Inter-Tribal Fish Commission	<p>The Spirit of the Salmon Fund works to mobilize resources for the Columbia River Inter-Tribal Fish Commission and its member tribes with an emphasis on implementing Wy-Kan-Ush-Mi Wa-Kish-Wit, the tribal salmon restoration plan.</p> <p>The four goals of the Spirit of the Salmon Fund are:</p> <ol style="list-style-type: none"> 1. Build and maintain relationships and networks with funders that benefit the Commission and member tribes. 2. Raise funds for projects with an emphasis on private sources. 3. Help tribes build capacity to directly seek funds with an emphasis on private sources. 4. Coordinate fundraising events and sponsorship for Commission outreach events. 	Nez Perce, Warm Springs, Umatilla, and Yakima Nations (Idaho, Oregon, and Washington)
Sovereign Leasing and Finance	To function as a community development financial institution (CDFI) and provide small business loans and services to members of the Salish and Kootenai Tribes.	The Confederated Salish and Kootenai Tribes of the Flathead Reservation (Montana)
Catawba Indian Nation Economic Development Program	To promote the development of small businesses and economic growth, to develop economic strategies, and to assist tribal members in obtaining employee training, technology, and skills.	Catawba Indian Nation (South Carolina)
Hopi Education Endowment Fund	Cultivating and nurturing the future of Hopi people through education by growing and safeguarding a perpetual source of funding.	The Hopi Tribe (Arizona)
Salt River Financial Services Institution	Empowering all generations of the Salt River Pima-Maricopa Indian Community through financial and educational services, delivered with integrity and excellence.	The Salt River Pima Maricopa Indian Community (Arizona)
Citizen Potawatomi Community Development Corporation	To promote, educate, and inspire the growth and financial well being of the Citizen Potawatomi Nation tribal community through financial education, access to capital, business development services and innovative capacity building practices.	The Citizen Potawatomi Nation (Oklahoma)

3. **Protecting the Sovereign Rights of Tribes is Frequently Cited as an Incentive for Developing 7871 Charitable Organizations.**

As stated above, tribes have a range of options available to them when they establish a charitable organization. They can create a nonprofit corporation under state law or under tribal law, or they can create a tribal program, fund, or subdivision which can receive tax-deductible donations as outlined in Section 7871 of the Internal Revenue Code. When conducting our case study interviews with existing 7871 organizations, participants frequently cited the desire to protect and exercise their sovereign rights as tribes when establishing a 7871 charitable organization. The most common issue cited was the desire to be free of interference by a state's Attorney General or Secretary of State. A second, less common issue was the desire to control what type of financial information would be shared. Establishing a nonprofit corporation under state law allows the state to regulate the activities of that entity, and registering with the IRS for 501(c)(3) status theoretically gives the federal government the right to review financial and other records to enforce compliance with 501(c)(3) rules. While each group acknowledged that they needed to share financial information with funders, some groups felt they had more control over the information they could disclose if they chose to operate as a 7871 organization.⁵

Most interviewees stated that their leadership wished to exercise tribal sovereign rights when establishing a charitable organization. Some interview participants noted that the difficult political environment in which they operate may put them at odds with the state government. Many scholars have documented the ongoing efforts by state and federal governments to circumvent and supersede the jurisdictional powers of tribes.⁶

An important component of our 7871 designation ...is because our tribe is very private about funds and about money. We want to protect the financial information of the tribe. They are very careful about what they release to the media or the press. We show how much we are getting from the tribe in our financial statements, but we do not disclose what programs the money came from, or anything about the tribe's finances.

– Staff person at a 7871 organization

Thus, many tribal leaders feel it necessary to avoid interference by state and federal governments. Creating a charitable tribal program, fund, or subdivision that is designed for exclusively public purposes is one way that a tribe can provide for the needs of its citizens, raise external charitable funds, and maintain the sovereign rights of the tribe in operating the program without the potential for state or federal government interference.

The main challenge of operating as a 7871 organization is that the organization will most often be treated as a governmental entity for the purposes of federal legislation (and federal grant programs - see the discussion below) and federal tax law. Technically the IRS and the federal government does not see this as an issue of sovereignty; rather it is about regulating the ability of donors to take a federal income tax deduction (or meet the requirements of functioning as a foundation). The IRS is acting to regulate the use of tax benefits. The IRS is willing to exempt an entry from scrutiny if it is a government, an integral part

⁵ There is a process for a governmentally affiliated 501(c)(3) to request an exemption from filing a Form 990. Cherokee Nation Education Corporation, a tribally incorporated nonprofit that applied to the IRS for 501(c)(3) status, has filed for and received this exemption.

⁶ Some examples include: Valandra, Edward Charles, *Not Without Our Consent: Lakota resistance to termination, 1950-59* (Champaign, University of Illinois Press, 2006), Wilkins, David Eugene, *American Indian Politics and the American Political System*, (New York: Rowman & Littlefield, 2006) and Bruyneel, Kevin, "The Colonizer Demands its 'Fair Share,' and More: Contemporary American Anti-Tribalism from Arnold Schwarzenegger to the Extreme Right." *New Political Science* 28 (September 2006), 297-321.

of a government, or a political subdivision of a government. If an organization falls into one of those categories, it doesn't need 501(c)(3) or other charitable status. The possible downside, however, is that it is identified as a governmental unit, which may exclude it from some federal grant programs and create confusion among other donors.

4. **There are Significant Barriers to Fundraising for 7871 Organizations.**

Our research documented multiple challenges associated with fundraising for a 7871 organization. The most common concerns mentioned were: 1) the challenges of working with private and corporate foundations that have bylaws or charters that restrict donations only to 501(c)(3) organizations; 2) the need to educate private and corporate foundations about the charitable goals and purposes of 7871 organizations and their tax status; and 3) the belief on the part of some foundation officers that all Indian tribes are rich due to gaming.

Because of a general lack of knowledge about American Indian tribes and their unique legal, economic, and social status, many foundations have written into their charters or bylaws that they can only give grants to 501(c)(3) organizations. Research by First Nations Development Institute has found that a large number of economic development and community development programs are operated by tribal governments and their departments rather than by 501(c)(3) nonprofit organizations on the reservation. Unfortunately, these economic and community development programs are often ineligible for foundation funding, and the de facto result is that the programs that are best suited to address the economic and social challenges in high poverty reservation communities are excluded from valuable foundation funding streams. As a consequence, many of the high poverty communities that foundations wish to serve are unable to participate in grant programs. In many cases, the exclusion of tribal programs which fall under Section 7871 of the IRC results in an unintentional discrimination when tribal government programs choose not to apply for foundation funds. One interviewee stated, "We just don't even apply to some foundations because their literature states that grantees have to be 501(c)(3)s." Another interviewee stated, "Sometimes we are not even being let in the door because foundations don't understand what we are and what we do." Many of those we interviewed mentioned that fundraising is already a difficult task and being a 7871 organization makes it even more challenging.

Many foundations have started to educate their program officers and boards of directors and are starting to amend their bylaws to allow for grant making to tribal governments and their programs. However, there is still a huge need for foundations to evaluate their funding policies and examine the extent to which they limit or restrict funding to Indian communities through policies that do not allow 7871 organizations to apply for funding.

If I had one thing to say to funders – Get educated! If funders don't understand what a 7871 organization is, that is a problem. They just think it is some bogus thing, or you know, that it is more money going to a tribal organization that will never get to where it needs to go. And that is really not what it is about.

– Staff person at a 7871 organization

I think the foundations are really looking for you to be a nonprofit - that is why they are giving you the money. And the only thing they know is that a 501(c)(3) is the nonprofit - that is how they wrote their bylaws not knowing that there would be something under tribal law that would come in...

– Staff person at a 7871 organization

5. The Myth of “Rich Indian Gaming Tribes” Persists as a Barrier to Fundraising for 7871 Organizations.

Our research suggests that 7871 tribal charitable organizations still receive numerous questions about why “rich gaming tribes” aren’t funding their work. In reality, the majority of tribes face serious fiscal challenges, the majority of tribal members live in a state of poverty, and most tribes have not benefitted from Indian gaming. According to the National Indian Gaming Association, out of the 367 tribal gaming facilities in operation in 2004, the 15 largest accounted for more than 37 percent of total Indian gaming revenues. The 55 largest tribal facilities accounted for nearly 70 percent of total Indian gaming revenues. Furthermore, if all of the profits from Indian gaming were distributed on a per capita basis, it would bring Indians living in reservation communities only up to about 50% of the median income of the average person in the United States. Many tribes are actively using much of their gaming revenue to remedy social problems that the federal government is unwilling to address under its trust responsibility. A large number of gaming tribes invest their revenue in health care centers, community centers, and other infrastructure to assist tribal members. Unfortunately, the myth of Indian riches perpetuates a grave injustice to Indian people, who continue to lag all other racial and ethnic groups in the United States on every metric of economic and housing security.

“There is a huge misconception out there. Just because we belong to a tribe that happens to have a casino, it is assumed that we have an abundance of money, that we don’t have any needs for additional funds. That is just not the case. The tribe does give us money, but we know that the money is not going to always be there for us. It is already to the point where we have to generate our own funds. We are in the same boat as everyone else. Just because we have a casino and council support doesn’t mean we are less needy of grants and funding sources. We have a lot of need and poverty in our local community. So I think we need to tackle that issue.

– Staff person at a 7871 organization

6. Federal Legislation is Inconsistent in its Treatment of 7871 Organizations and their Eligibility for Federal Grant Programs.

Our research suggests that federal grant programs are inconsistent at best and restrictive at worst when it comes to funding 7871 organizations. We are aware of three national grant making programs (two at Health and Human Services, one at the United States Department of Agriculture) where tribal charitable programs were denied participation because they were not 501(c)(3) charitable organizations. Congressional leaders and their staffers often design federal grant programs to target private sector, non-governmental programs. Some federal government programs will not allow grant making to a government entity because they want to get the money out to what they consider the private sector. There are a range of philosophical and ideological reasons for this, but the practical result is that many federal grant programs limit their funding to 501(c)(3) nonprofit charitable organizations to the exclusion of tribal governmental programs that are well positioned to provide similar services to tribal members. Because of the unique nature of many tribal governments and their wide-ranging social service programs, many tribal programs offer services that would typically be supported by third sector or civil society organizations in non-tribal communities. The history of federal underdevelopment of reservation communities, the small nonprofit sector, and the active role of the tribal government means that many social service programs that would normally be handled by the nonprofit sector are instead governmentally affiliated in Native communities and therefore not eligible for funding by some federal grant programs. This results in an

unequal opportunity for tribal charitable organizations to receive federal funding that is designated for social and economic development programs that would be well suited for highly impoverished tribal reservation communities. This most likely is a result of a lack of understanding on the part of congressional leaders and their staffers about the social, economic, and legal conditions in Indian reservation communities. Although there are several federal funding sources that are specifically designated for tribal governments, we contend that tribal charitable 7871 organizations should also be eligible to receive funding that is often limited to 501(c)(3) organizations or so called “third sector” organizations. This would be remedied if legislation were written such that both 501(c)(3) and 7871 tribal government programs would be eligible for federal grant programs.

7. There are a Large Number of Tribes That Have Spun Off 501(c)(3) Organizations To Remove Barriers to Fundraising.

Our research suggests that there are many tribes or tribal programs that have decided to establish 501(c)(3) organizations to facilitate fundraising after experiencing significant challenges trying to raise funds as 7871 tribal charitable organizations. See Table 2 for a list of examples. Groups we have spoken with have identified the lack of understanding of 7871 organizations and their ineligibility for most private and many federal grant programs as a significant barrier to fundraising. Given the already challenging task of raising philanthropic dollars, many groups have decided to spin off a 501(c)(3) that is still very closely tied to a tribal program, usually through board membership, but that is eligible for a broader range of funding sources. This 501(c)(3) continues to support social, educational, or economic development programs in the local community, as guided by its charter or mission, but faces far fewer barriers to fundraising. See the story of the Laguna Education Foundation, box inset, for an illustration. Several of the people we interviewed expressed disappointment that they were not able to raise funds effectively as a 7871 organization.

Table 2: Examples of Organizations that Have Switched to 501(c)(3) (or Spun off a 501(c)(3)) after Facing Challenges with Fundraising

Organization Name	Mission	Tribe
Katikitegon Community Development Corporation	To promote economic development and social welfare programs on the Lac Vieux Desert Indian Reservation and surrounding community	Lac Vieux Desert Tribe (Michigan)
Laguna Education Foundation	To promote life-long learning and educational programming for the Pueblo of Laguna.	Laguna Pueblo (New Mexico)
Ho-Chunk Community Development Corporation	To raise the socio-economic and educational levels for Native American communities and the people of Thurston County in Nebraska. This mission will be accomplished through: <ul style="list-style-type: none"> • Providing employment. • Expanding opportunities to own, manage and operate business enterprises in economically depressed areas. • Identifying and assembling public and private resources for community development. • Expanding housing opportunities for low-income persons and families. 	Ho-Chunk/ Winnebago Tribe (Nebraska)

The Laguna Education Foundation: A Switch to 501(c)(3) Status

The Laguna Education Foundation was originally established in 1995 by the board of the Laguna Department of Education, under the leadership of Superintendent Gilbert Sanchez. The foundation was established as a means of acquiring additional resources to support Laguna Department of Education programs. While the foundation initially operated under 7871 status, this status proved confusing to outside donors. Lee Francis IV, the current Executive Director stated, “The main obstacle to a 7871 at the time was the confusion over what it meant. And then having to try to explain that to funders, or having to try to explain that when you are putting in a grant to a foundation, and then the regulations and the guidelines are not addressing sovereign entities....I think what happened was that the 7871 regulation was kind of in this grey area – funders are trying to figure out, ‘are we funding a tribal entity, or what?’ I think that was the most significant obstacle that they faced early on with the foundations, really just getting them to understand what it meant, and what 7871 was. In the mean time, people are confused, and they reject the proposals.”

The foundation eventually made the decision to apply for 501(c)(3) status. In 1998, the Laguna Tribal Council passed Tribal Resolution No.15-98 approving the establishment of the foundation as an independent nonprofit organization, and they incorporated under state law and received their IRS ruling the same year. The schools and programs within the Laguna Department of Education receive general operating support from various federal and state agencies. While funding from these sources covers basic operating costs, the funds are often restricted for specific uses and set unrealistic limits on administrative costs. Due to limitations imposed by such federal and state regulations, it became necessary to establish an alternative revenue stream that would not only support the higher education needs of the people, but would also create a venue for the development and support of more innovative and creative educational programs. To this end, the Laguna Education Foundation was created and charged with the mission to raise revenue both within and outside of the reservation to fully support the educational needs of the Laguna people.

In 2001, the Laguna Tribal Council rose to the challenge of funding education by establishing a \$4.2 million trust fund specifically for higher education. The benefits from the trust fund go to support educational scholarships and the Laguna Education Foundation. The Laguna Tribal Council and Laguna tribal members continue to actively support the efforts of the Laguna Education Foundation through employee contributions and direct donations. The Foundation currently has diverse revenue streams which include donations from corporations, foundations, and tribal members through workplace giving campaigns, in addition to revenues from their endowment. “It has been a lot easier to raise funds as a 501(c)(3) organization,” acknowledges Lee Francis IV.

The Laguna Education Foundation was established long before the Laguna casino was built in early 2000, and as of yet has not received any of the funds generated from the gaming enterprise. The Laguna Education Foundation is very happy with their success so far in helping hundreds of tribal members attend college. During the 2008-2009 academic year, 125 Laguna college students were granted scholarships, for both graduate and undergraduate education, from the Higher Education Program of Partners for Success and the Laguna Education Foundation. The foundation looks forward to many more years of implementing its mission of supporting lifelong learning opportunities for members of Laguna Pueblo.

8. There is a Need to Establish “Best Practices” to Reassure Prospective Donors to 7871 Organizations.

It is reasonable for donors – including individuals, foundations, and federal grant programs – to expect accountability on the part of those they are giving money to. Our interviews with 7871 organizations suggest that these organizations are doing what they can to be accountable to their donors, including acknowledging all gifts in writing, providing annual audited financial statements, limiting any form of lobbying, and complying with all grant requirements. However, as 7871 organizations, they are not subject to the same requirements as 501(c)(3)s such as disclosing financial information on the Form 990. See the story of the Hopi Education Endowment Fund, box inset, for an illustration of best practices and lessons learned about managing a 7871 organization.

The 7871 organizations we interviewed displayed high levels of professionalism but were interested in any additional steps that could be taken to reassure donor confidence in 7871 organizations. There was a general interest in generating a list of “best practices” that groups can use to reassure donors. These best practices touch on three main areas: 1) financial transparency; 2) accountability to donors; and 3) limiting political activity. These recommended best practices are listed here:

- 1. Provide financial transparency by making annual audited financial statements for the tribal charitable organization available to all donors and potential donors.** The organization may also wish to include additional financial information (such as executive salaries and other financial information that is provided on the IRS Form 990) and disclosure of any quid pro quo benefits that may be provided to donors.
- 2. Demonstrate accountability to donors by acknowledging all gifts in writing.** Organizations may also consider adopting the Association of Fundraising Professionals’ Donor Bill of Rights (see box inset) which states that donors have the right to be informed of the organization’s mission, be informed of the organizations’ leadership, and to be assured that information about donations is handled with respect and confidentiality, among other rights.

The Hopi Education Endowment Fund: Promoting Best Practices for 7871 Organizations

In November 2000 the Hopi Tribal Council passed Tribal Ordinance #54 that established the Hopi Education Endowment Fund as a 7871 charitable program with the mission of “cultivating and nurturing the future of Hopi people through education by growing and safeguarding a perpetual source of funding.” The same ordinance also allocated the Hopi Education Endowment Fund’s first gift of \$10 million dollars, funded mainly from tribal coal mining royalties, to be deposited into a perpetually endowed fund. The Hopi Tribe is a non-gaming tribe and the leadership believed it was very important to create a permanently endowed fund because most of their revenue came from coal, a non-renewable resource. The Hopi Education Endowment Fund provides financial assistance to Hopi students of all ages to achieve higher education, supports educational research and programs, and sponsors other charitable and educational activities. In establishing the Hopi Education Endowment Fund within the guidelines of Internal Revenue Code 7871, the Hopi Tribe placed the organization under the jurisdiction of the tribal government. This allows the Hopi tribal government to regulate and monitor the activities of the Fund.

Since its inception, staff members have worked diligently to develop the internal capacity of the new organization. Hopi Education Endowment Fund staff members note that while each of them was incredibly excited about the development of the Fund, they all had a lot to learn about creating and operating a new 7871 organization. Early efforts of LuAnn Leonard, Executive Director, Sam Tenakhongva, Marketing and Special Events Manager, and Vernon Kahe, Development Manager, were aimed at tapping local and national professional development organizations and other nonprofit resources so that their small but eager staff could learn and develop internal policies for daily operations of the organization. Staff members sought out local and national trainings and workshops to learn, develop, and implement policies and procedures to ensure transparency and accountability to their Hopi communities and donors. Hopi Education Endowment Fund staff members credit organizations such as the Nonprofit Resource Center of Northern Arizona, the Association of Fundraising Professionals, First Nations Development Institute, Native Americans in Philanthropy, Arizona State University, the Nonprofit Management Institute, and The Center on Philanthropy at Indiana University for helping them learn about established nonprofit best practices and adapt these practices to their specific 7871 context, mission, and goals. Moreover, the trainings and workshops of these organizations helped the Hopi Education Endowment Fund staff members learn about emerging trends and practices. Hopi Education Endowment Fund staff also sought advice from such established Native American nonprofit organizations as the American Indian College Fund located in Denver, Colorado. Hopi Education Endowment Fund staff members traveled to the American Indian College Fund offices and shared information about their individual experiences and best practices.

During their early years, Hopi Education Endowment Fund staff members noted that the most important thing in developing the internal capacity of their new organization was staying aware of training opportunities and seeking out other organizations to share experiences and information with. These opportunities helped them learn and alter existing nonprofit practices for application to their tribal 7871 context. These efforts led to greater proficiency on topics such as strategic planning, mission development, financial management, special event planning, and sponsorship and fundraising.

Some of the most significant outcomes of these early efforts were that the organization adopted a Donor Bill of Rights and developed gift acceptance and conflict of interest policies. The organization has also started creating an internal copy of their own Form 990 (based on the IRS Form 990), and they make it available to funders if it is requested. Hopi Education Endowment Fund staff keep abreast of the changes that happen with regard to the IRS Form 990, and make sure that all the information required for the form is readily available to their funders. "This could be a best practice for other 7871 organizations," stated LuAnn Leonard. "First Nations Development Institute could develop a financial reporting form similar to the Form 990 that 7871 organizations could fill out to ensure they are providing transparency and accountability for their donors."

In addition to developing internal policies and procedures, in our interviews with Hopi Education Endowment Fund staff members, they noted that communication is another very important component of their organization's success. They note that communicating with individual and institutional donors through such media as newsletters and emails has greatly enhanced their visibility. This also provides opportunities to showcase their programs and update donors on their organizational activities.

"Individual donors are an important part of our strategy," stated LuAnn Leonard. "Nationally, the majority of money given each year in the U.S. comes from individual donors. We feel it is important to reach out to individuals as well as foundations and to tell them our story."

Hopi Education Endowment Fund staff members say that the most important aspect of their success has been their focus on community outreach and communication. Connected to this is effectively communicating about their history and culture as it relates to the mission and needs of the organization. Hopi Education Endowment Fund staff members also note that keeping their community informed keeps them accountable to Hopi needs, culture and history.

All of their hard work has paid off. The Hopi Education Endowment Fund has received many national awards for their innovative programs and community service. These awards include receiving High Honors from Harvard's Honoring Contributions in the Governance of American Indian Nations (Honoring Nations) in 2006 and receiving the Outstanding Philanthropic Organization Award from the Northern Arizona Chapter of Association of Fundraising Professionals in 2007.

- 3. When creating the tribal charitable organization under tribal law, explicitly include provisions for protection of donor's gifts.** The legislation that creates the tribal charitable organization should 1) restrict the use of donations received specifically for charitable purposes; 2) contain a provision restricting the use of donations for exclusively public purposes (this is a statutory requirement for deductibility of contributions to a government); 3) include a provision specifying that each donation not earmarked for a specific charitable or educational program could be designated for use by any agency, division or branch of the tribal government, but only for public purposes. For sample tribal legislation, see *Giving With Honor: A Legal Reference on Charitable Activities of American Indian Tribes* which provides a sample tribal resolution creating a restricted fund for charitable purposes.
- 4. In the organization's bylaws, ordinance, or charter, explicitly restrict the use of donations for lobbying or political campaign activity.** In order to reassure donors, an organization should restrict the use of donations for lobbying or political campaign activity, consistent with the standards for a 501(c)(3) organization. This can be written into the legislation that creates the tribal charitable organization, or can be written into the organization's bylaws, ordinance, or charter.

Our interviewees generally agreed that the community of 7871 practitioners would benefit from adopting these or similar standards of professionalism to reassure donors and demonstrate transparency and accountability to funders. This list of best practices may also serve as a road map for future 7871 organizations.



The Donor Bill of Rights

Philanthropy is based on voluntary action for the common good. It is a tradition of giving and sharing that is primary to the quality of life. To ensure that philanthropy merits the respect and trust of the general public, and that donors and prospective donors can have full confidence in the nonprofit organizations and causes they are asked to support, we declare that all donors have these rights:

- I. To be informed of the organization's mission, of the way the organization intends to use donated resources, and of its capacity to use donations effectively for their intended purposes.
- II. To be informed of the identity of those serving on the organization's governing board, and to expect the board to exercise prudent judgment in its stewardship responsibilities.
- III. To have access to the organization's most recent financial statements.
- IV. To be assured their gifts will be used for the purposes for which they were given.
- V. To receive appropriate acknowledgement and recognition.
- VI. To be assured that information about their donation is handled with respect and with confidentiality to the extent provided by law.
- VII. To expect that all relationships with individuals representing organizations of interest to the donor will be professional in nature.
- VIII. To be informed whether those seeking donations are volunteers, employees of the organization or hired solicitors.
- IX. To have the opportunity for their names to be deleted from mailing lists that an organization may intend to share.
- X. To feel free to ask questions when making a donation and to receive prompt, truthful and forthright answers.

For more information visit: <http://www.afpnet.org>

The Donor Bill of Rights was created by the Association of Fundraising Professionals (AFP), the Association for Healthcare Philanthropy (AHP), the Council for Advancement and Support of Education (CASE), and the Giving Institute: Leading Consultants to NonProfits. It has been endorsed by numerous organizations. It is reprinted here from the AFP website.

V. RECOMMENDATIONS

Our interviews with five 7871 or former 7871 organizations has yielded several new findings and corroborated some previous research. Based on our research, we make the following recommendations in order to support the growing field of 7871 organizations, and to protect their sustainability:

1. Foundations Need to Educate Themselves About 7871 Organizations.

Fundraising is a challenging task under any circumstances. Foundation leaders should educate themselves about the tax status of 7871 tribal charitable organizations and best practices for their governance, as well as their role in protecting tribal sovereignty while at the same time providing valuable social and economic services to their communities. This would help remove any automatic barriers to funding these important charitable organizations serving Native communities.

Foundations should evaluate their current giving practices and the extent to which their grant making processes contribute to the exclusion of 7871 organizations. Moreover, foundation leaders may need to examine the extent to which potential 7871 exclusion affects their ability to fund sustainable programs in Indian Country, programs that have significant community impact. If their foundation grant guidelines limit opportunities to fund 7871 organizations, foundations should consider increasing funding to Native community foundations that do support 7871 organizations. This would still allow foundation support of Native communities and 7871 organizations.

2. Federal Policymakers and Their Staffers Need to Become Better Informed About 7871 Organizations.

Our research suggests that 7871 tribal charitable organizations (and for that matter, tribal governments) are treated differently by different government agencies and by different federal grant programs. We uncovered one story where a 7871 tribal charitable organization received an award letter from a federal grant program and then had it rescinded when the grantor discovered they were a tribal charitable organization. It is imperative that federal policymakers and their staffers learn more about the tax status of 7871 tribal charitable organizations, their role in providing charitable services, and best practices for their governance, in order to remove any automatic barriers to these important charitable organizations serving Native communities.

RECOMMENDATIONS

3. **Tribal Charitable Organizations Should Establish “Best Practices” to Reassure Prospective Donors to 7871 Organizations.**

Our research suggests that several 7871 charitable organizations are already doing what they can to demonstrate accountability to their donors, including acknowledging all gifts in writing, providing annual audited financial statements, limiting any form of lobbying, and complying with all grant requirements including reporting. Some tribal charitable organizations also prepare an IRS Form 990 and make it available to donors (though they do not need to file it with the IRS).

It is reasonable for donors – including individuals, foundations, and federal grant programs – to expect accountability on the part of those they are giving money to. There is an interest among 7871 organizations in developing standard best practices that a 7871 organization can follow to reassure prospective donors. We at First Nations Development Institute, with input from several tribal charitable organizations, suggest that 7871 organizations follow the list of best practices outlined earlier in this report to demonstrate accountability to their donors.

Additional Resources and Recommended Reading

There are several resources discussed in this report. The following is a list of recommended reading:

1. The “how-to” manual *Options for Designing Your Tribal Philanthropic Program* is available for download on the First Nations Development Institute website at www.firstnations.org/SNAPManual.
2. Links to example tribal nonprofit corporations codes are available at www.firstnations.org/SNAPManual.
3. To learn more about 7871 organizations, visit www.firstnations.org/7871org on the First Nations Development Institute website.
4. To learn more about letters sent to First Nations Development Institute by the IRS clarifying issues related to philanthropic organizations and tribal governments, visit www.firstnations.org/7871org on the First Nations Development Institute website.
5. To order *Giving with Honor: A Legal Reference on Charitable Activities of American Indian Tribes*, call the Council on Foundations.



VI. CONCLUSION

Increasingly, tribes need to diversify their revenue streams to supplement inconsistent and sometimes restrictive federal funding sources. Tribal charitable organizations, or 7871 organizations, offer an innovative way for tribal programs to carry out their community development missions and at the same time raise additional funds to support their work. Tribal funds, programs, or departments are often well positioned to address issues related to education, social services, or economic development in the local Native community. Increasingly, tribes are using philanthropic entities to address the needs of their tribal citizens, and the provisions in Section 7871 of the IRS code to help facilitate their work.

But over the past two decades very little progress has been made in educating the mainstream philanthropic community and other funders. 7871 organizations consistently face challenges related to fundraising from private and corporate foundations. Federal government programs designed to alleviate poverty and support economic development continue to exclude tribal government programs as eligible grantees. There is still a great need to raise awareness of the important role 7871 organizations can play in serving the needs of tribal citizens while at the same time protecting the sovereignty of tribes to regulate and control their own charitable activities.

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