

**BEFORE THE ALASKA OFFICE OF ADMINISTRATIVE HEARINGS ON REFERRAL
FROM THE COMMISSIONER OF REVENUE**

In the Matter of)	
)	
CENTRAL COUNCIL OF THE)	OAH No. 17-0616-PFC
TLINGIT AND HAIDA INDIAN)	
TRIBES OF ALASKA)	
_____)	

DECISION

I. Introduction

The Central Council of the Tlingit and Haida Indian Tribes of Alaska applied to participate in the Pick.Click.Give program for procuring donations through the Permanent Fund Dividend program. The Permanent Fund Dividend Division of the Department of Revenue denied the application because the Council was not organized under IRC § 501(c)(3). The Council argued that its status as a tax-exempt Indian tribe made it equivalent to a 501(c)(3) corporation. Because the statute that authorizes Pick.Click.Give allows only actual 501(c)(3) corporations to participate, and the only exception to that rule does not include the Council, the Division’s decision is affirmed.

II. Facts

The Central Council of the Tlingit and Haida Indian Tribes of Alaska is a federally-recognized Indian tribe, located in Southeast Alaska.¹ The Council has an annual budget of around \$25 million. As required, it has an annual independent audit performed on its finances. Richard Peterson, the president of the Council, testified that the Council perennially receives near-perfect audits.²

The Council engages in many different charitable activities.³ The Council provides many services to its members and the public, including services for youth development, aid and service to the elderly, educational services, and arts and cultural services.⁴ It also exercises certain powers of a sovereign, including adjudication of some civil and criminal matters involving its members, and administrative matters including adoptions, child custody, child support, divorce, domestic violence, guardianships, and marriage. Much of the Council’s charitable expenditures

¹ Division Exhibit 5 at 5.

² Peterson testimony.

³ Belton testimony; Peterson testimony.

⁴ Belton testimony. Theresa Belton is the Chief Financial Officer of the Council.

are on educational activities, including scholarships (for which it raises money in its king salmon derby, when the king salmon fishing season opens), head start, caps and gowns for graduating youth (including the very young when they complete a program), and a tutoring program.

The Council raises funds for its charitable and educational programs largely through grant funding.⁵ Some of its grants, however, have conditions or limits on spending that hamper its ability to adhere to its policies. An example explained by Mr. Peterson was the Council's commitment to making its educational programs available to all village residents, without regard to whether the child was a member of a tribe. Because some of its grant funding was restricted to use for tribal members, the Council must engage in separate fundraising in order to pay for the same benefits provided to non-Natives.⁶

Because the Council was interested in increasing its non-grant funding, it filed an application to participate in the Department of Revenue's program for charitable contributions to be made by individuals from their Permanent Fund Dividends under AS 43.23.062, called the "Pick.Click.Give" program.⁷ The Division denied the application, on the grounds that the Council was not a "501(c)(3)" corporation. The Council appealed the denial, and a hearing was held on June 22, 2017. Following the hearing, the Council was permitted to file additional information, and the Division was given an opportunity to respond. The record closed on June 26.

III. Discussion

Eligible charitable and educational organizations may participate in the Pick.Click.Give program, which allows applicants for Alaska Permanent Fund Dividends (PFDs) who file electronically the opportunity to contribute some of their PFD money to the charitable organization.⁸ Under statute, the Department of Revenue will include an eligible charitable or educational organization or community foundation on the list of organizations participating in Pick.Click.Give "only if the organization . . . (2) was qualified for tax exempt status under 26 U.S.C. 501(c)(3)."⁹

The Council has submitted IRS documents regarding its tax-exempt status, including pages from the Federal Register identifying it as a tribe and a letter from Judy Pearson, an Indian

⁵ Belton testimony; Peterson testimony.

⁶ Peterson testimony.

⁷ <http://www.pfd.alaska.gov/>.

⁸ AS 43.23.062.

⁹ *Id.*

Tribal Government Specialist with the IRS.¹⁰ The Council argues that because it is a tax-exempt Indian tribe, it is the equivalent of a 501(c)(3) corporation. The letter it submitted explained that for purposes of applying for a grant, the status of being a tax-exempt Indian Tribe could be considered the equivalent of a 501(c)(3) corporation.¹¹

The letter from Ms. Pearson makes clear, however, that “Indian tribal governments do not qualify for exemption from federal income tax as described under Section 501(c)(3).”¹² Ms. Pearson cites to federal governing grants, and explains that for purposes of grants from private foundations, the distinction between a 501(c) entity and a governmental unit will not affect the status of the grant as a “qualifying distribution.”¹³

For purposes of this case, I accept the Council’s argument that it is *equivalent* to a 501(c)(3) corporation.¹⁴ It is not, however, an actual 501(c)(3). The question is whether AS 43.23.062 allows an entity that is not an actual 501(c)(3) to participate in Pick.Click.Give.

This question is entirely a question of state law. Although I understand the Council’s argument, and Ms. Pearson’s explanation that, for tax purposes regarding charitable donations and grants, an Indian tribe is no different from a 501(c)(3) corporation, this case is not interpreting or applying federal tax law. This case must apply only AS 43.23.062.

Alaska Statute 43.23.062 does not allow entities that are equivalent to 501(c)(3) corporations to participate in Pick.Click.Give. With one exception, it allows only actual 501(c)(3) corporations to participate. The one exception is the University of Alaska.¹⁵ As explained below, the special exception for the University confirms that the Division’s interpretation is correct because that exception required legislative action.

For purposes of this case, the University’s tax status is much like the Council’s. As a public university, the University of Alaska is a tax-exempt organization. Donations to the

¹⁰ Division Exhibit 1 at 5-6, Division Exhibit 5.

¹¹ Division Exhibit 1 at 5-6.

¹² *Id* at 5.

¹³ *Id*.

¹⁴ Because the Council is a tribe, it has tax-exempt status, meaning it does not have to pay tax on its income. It is exempt from tax under Internal Revenue Code (IRC) § 7871. This section of federal law analogizes a tribe to a state. My research of the Internal Revenue Code confirms the Council’s argument that if a person made a donation to the Council, that donation would likely be tax deductible, likely to the same extent that a donation to a charitable organization would be tax deductible under IRC § 501(c)(3). The federal law that governed the deduction of a donation to the Council, however, would not be IRC § 501(c)(3). The law governing the Council is a different law—IRC § 170(c)(1).

¹⁵ AS 43.23.062(d). The statute clearly exempts the University from the requirement of being a 501(c)(3): “Except for each campus of the University of Alaska, the department may include an educational organization, community foundation, or charitable organization on the contribution list for a current dividend year only if the organization . . . (2) is exempt from taxation under 26 U.S.C. 501(c)(3).”

University would be tax deductible. The University, however, is not a 501(c)(3). It is a public institution.¹⁶

If, as the Council argues, an entity that is equivalent to a 501(c)(3) corporation could participate in Pick.Click.Give, then the University would be eligible without the legislature having to adopt a special rule for the University. The fact that the University needed a special exemption in order to participate, however, tells us that entities that are equivalent to 501(c)(3)s are NOT eligible. If the Council’s interpretation that entities equivalent to 501(c)(3)s were automatically eligible, it would mean that the special rule for the University would be unnecessary. The Alaska Supreme Court has frequently advised that “[w]hen we engage in statutory construction we will presume ‘that the legislature intended every word, sentence, or provision of a statute to have some purpose, force, and effect, and that no words or provisions are superfluous.’”¹⁷

Because this decision must follow the rulings of the Alaska Supreme Court for interpretation of statutes, this decision must conclude that, in the absence of a special exemption, only actual 501(c)(3) corporations may participate in Pick.Click.Give. This means that the Council’s remedy for its exclusion from Pick.Click.Give is through the legislative process, not the administrative process.¹⁸

One other issue surfaced at the hearing. The Council’s Chief Financial Officer, Theresa Belton, explained that she had researched the list of participants in the Pick.Click.Give program, and discovered that a tribal entity called “Eastern Aleutian Tribes” was on the list. She asked for an explanation. The Division was given the opportunity to supplement the record with an explanation for why this tribal entity was eligible but the Council was not. The Division contacted the IRS, and confirmed that Eastern Aleutian Tribes, Inc., has been a qualifying 501(c)(3) corporation since 1991.¹⁹ This shows that the Division’s interpretation of the law has

¹⁶ See, e.g., UAA, Office of Sponsored Programs, Institutional Information; available at: <https://www.uaa.alaska.edu/research/office-sponsored-programs/sponsored-required-information.cshtml>.

¹⁷ *Mech. Contractors of Alaska, Inc. v. State, Dep’t of Pub. Safety*, 91 P.3d 240, 248 (Alaska 2004) (quoting *Kodiak Island Borough v. Exxon Corp.*, 991 P.2d 757, 761 (Alaska 1999) (quoting *Rydwell v. Anchorage Sch. Dist.*, 864 P.2d 526, 530–31 (Alaska 1993))).

¹⁸ The Division also suggested as an alternative that the Council could form its own 501(c)(3). See Division Exhibit 4.

¹⁹ Division’s *Notice of Verification of 501(c)(3) Status for: Eastern Aleutian Tribes, Inc. EIN: 92-0139107* (citing <https://www.irs.gov/charities-non-profits/exempt-organizations-business-master-file-extract-eo-bmf>).

been consistently applied, which also adds support to the conclusion that AS 43.23.062 allows only actual 501(c)(3) entities to participate in Pick.Click.Give.²⁰

IV. Conclusion

The Division's decision that the Central Council of the Tlingit and Haida Indian Tribes of Alaska is not eligible for Pick.Click.Give because it is not a 501(c)(3) corporation is affirmed.

DATED this ____ of _____, 2017.

By: _____
Stephen C. Slotnick
Administrative Law Judge

²⁰ The parties raised additional arguments, including an explanation from the Division that the Council is not the same as a 501(c)(3) because it engages in political and sovereign activity. The Council responded that it accounts for its political activity separately, and that its audits confirm that it segregates political from charitable and educational activity. I do not need to consider these arguments because the Council simply is not eligible under the statute as written.

Adoption

Under a delegation from the Commissioner of Revenue and under the authority of AS 44.64.060(e)(1), I adopt this decision as the final administrative determination in this matter.

Judicial review of this decision may be obtained by filing an appeal in the Alaska Superior Court in accordance with Alaska R. App. P. 602(a)(2) within 30 days after the date of this decision.

DATED this 28th day of July, 2017.

By: Signed
Name: Stephen C. Slotnick
Title: Administrative Law Judge

Adoption

Under a delegation from the Commissioner of Revenue and under the authority of AS 44.64.060(e)(1), I adopt this decision as the final administrative determination in this matter.

Judicial review of this decision may be obtained by filing an appeal in the Alaska Superior Court in accordance with Alaska R. App. P. 602(a)(2) within 30 days after the date of this decision.

DATED this 14th day of July, 2017.

By: Signed
Signature
Bride A. Seifert
Name
Administrative Law Judge
Title

[This document has been modified to conform to the technical standards for publication.]