Tax Status of Wholly Owned Tribal Entities – Final Regulations

Tribal Consultation Summary & Federal Response

December 15, 2025

Background

For thirty years, Tribal governments have requested that the United States Department of the Treasury (Treasury) and Internal Revenue Service (IRS) (collectively, the Department) confirm that entities wholly owned and chartered under Tribal law are not subject to income tax, similar to the tax treatment of entities chartered under Section 17 of the Indian Reorganization Act (IRA) or Section 3 of the Oklahoma Indian Welfare Act (OIWA). This confirmation was sought to support the growth of Tribal economies which depend on the generation of governmental revenue through Tribal commercial activities.

On October 9, 2024, the Department published a Notice of Proposed Rulemaking (NPRM) entitled "Entities Wholly Owned by Indian Tribal Governments". The Department conducted Tribal consultations on December 16, 17, and 18, 2024. The Department reviewed the feedback received from these Tribal consultations and conducted additional consultation with the Treasury Tribal Advisory Committee (TTAC) to integrate this feedback into final regulations. On December 15, 2025, Treasury issued final regulations which adopt the regulations proposed in the NPRM, as revised in response to the Tribal consultations and other public comments received. A fact sheet was also published to assist Tribal leaders in understanding the final regulations.

Pursuant to the Department's consultation process, below is a summary of the feedback received in Tribal consultation and the Department's response.

Broad Feedback

Status of Tribal Economies and Effect of Delayed Guidance: Tribal commenters highlighted that economic development is not just a business endeavor for Tribes, it is an exercise of their inherent authority to raise government revenue. They expressed appreciation for the NPRM's recognition that Tribes often lack traditional tax bases and, as a result, must rely on commercial activities to generate governmental revenue. Commenters highlighted that commercial activities support a range of essential services such as healthcare, education, and housing. Commenters also shared that the decades long tax uncertainty regarding their wholly owned Tribal entities has negatively impacted their economic growth and impaired their access to capital because lenders are hesitant to conduct business with entities that have federal tax uncertainty.

> **Federal Response:** The Department appreciated consultation feedback explaining why wholly owned Tribal entities are critical to Tribal governmental revenue. We have reflected this feedback in the preamble of the final regulations.

Recognition of Tribal Self-Governance and Self-Determination: Commenters appreciated the NPRM's recognition of a Tribe's inherent authority to create businesses under their own laws, deference to a Tribe's self-determination of their laws, and acceptance of their right to create entities that are owned by and serve multiple Tribes.

Federal Response: The preamble of the final regulations incorporate Tribal consultation feedback by maintaining recognition of Tribal self-governance and self-determination in business formation.

Avoidance of Administrative Burdens: Commenters appreciated that the NPRM does not impose new information reporting requirements on wholly owned Tribal entities to reduce administrative burdens. Commenters also supported the NPRM's bright-line test rather than an integral part test which they explained would result in confusion and increase auditing against Tribal entities. Commenters further strongly supported the NPRM's reliance language for prior tax years and highlighted that this provision is critical in the final regulation because Tribes have formed the expectation that their wholly owned Tribally chartered entities were not subject to income taxation. Lastly, commenters supported the NPRM's treatment of wholly owned Tribally chartered and federally incorporated Tribal entities as instrumentalities for the limited purpose of accessing certain energy tax credits.

Federal Response: The Department incorporated this helpful Tribal feedback and maintained these provisions in the final regulations to reduce administrative burdens and further effective tax administration.

Responses to Consultation Questions

1. **The NPRM provides Tribally chartered entities parity with federally chartered Tribal corporations. What questions or comments do you have regarding this proposed rule?**

Commenters supported the NPRM's recognition that Tribally chartered entities have parity with federally chartered Tribal corporations. Commenters reiterated that Tribally chartered entities are a preferred method for revenue generation over federal incorporation under Section 17 of the IRA or Section 3 of the OIWA. As expressed in earlier consultations, commenters highlighted that the federal incorporation process is a lengthy process that requires the Department of the Interior's approval and an act of Congress to dissolve an entity and limits their sovereign decision-making to address emerging economic opportunities.

Subsidiary: Many commenters also requested that the final regulations make clear that the rule applies to subsidiary entities. They requested the following edit in bold to proposed § 301.7701-l(a)(4),

> Also, except as provided in paragraph (a)(4)(ii) of this section, entities wholly owned by one or more Indian Tribal governments (within the meaning of section 7701(a)(40) of the Code), **directly or indirectly**, and organized or incorporated exclusively under the laws of the Indian Tribal government(s) that own them (wholly owned Tribal entity) are not recognized as separate entities for Federal tax purposes.

Federal Response: In order to ensure clarity regarding indirect ownership, the final regulations add language in § 301.7701-1(a)(4) to clarify that the wholly owned requirement can be met through ownership by other entities not recognized as separate under § 301.7701-1(a)(4). Example 2 of the final regulations is intended to be a general illustration of the proposed rule that subsidiaries in a tiered entity structure of wholly owned Tribal entities are not recognized as separate entities for Federal tax purposes and are, therefore, exempt from Federal income tax.

Multi-Tribe Clarification: The majority of commenters supported the NPRM's recognition that Tribes may form an inter-Tribal entity and highlighted that these structures are common amongst Tribes to achieve economies of scale

or because an inter-Tribal entity serves multiple Tribes. However, the majority of commenters expressed that the requirement that an inter-Tribal entity be exclusively organized or incorporated under each Tribe's law to be confusing and unworkable.

Commenters explained that what appears to be intended in the proposed regulations is that each Tribe's governing body, or other body or official acting pursuant to authority delegated by the governing body, would approve an entity's charter that would be identical for each tribe and, therefore, the entity would be duly organized pursuant to each Tribe's legislative or administrative process for creating such an entity. Even though created under each tribe's legislative process, commenters highlighted that an inter-Tribal charter should be able to contain a choice of law and forum clause that designates the entity as subject to the corporate or limited liability laws of just one Tribe.

Commenters requested that the NPRM's multi-Tribe language be amended to require that the inter-Tribal entity be authorized under each Tribe's law and allow Tribes to adopt a certain choice of law and forum. They also requested that the multi-Tribe example be edited to remove the reference to an inter-Tribal entity be organized or incorporated "exclusively" under the laws of each Tribe because that requirement is not possible.

Further, some commenters requested that the preamble acknowledge that even if not organized under the laws of multiple Tribes, a partnership or limited liability company established under Tribal or state law and owned by multiple Tribes would be a passthrough entity for federal income tax purposes if the entity does not elect to be treated as a corporation.

Federal Response: The preamble to the final regulations address confusion over the phrase "exclusively." Specifically, the preamble explains that the word "exclusively," as used in the regulations, means that the entity must be formed under the laws of one or more of the Indian Tribal governments that own it and not the laws of an Indian Tribal government that does not have an interest in the entity or the laws of a state or foreign government. Therefore, an entity formed solely under the laws of one owning Indian Tribal government that is also owned by several other Indian Tribal governments would be considered as organized or incorporated exclusively under the laws of one or more of the Indian Tribal governments that own it and would generally not be recognized as a separate entity for Federal tax purposes.

Further, the final regulations incorporate consultation feedback regarding choice of law and forum. The regulations add a sentence that clarifies that whether an entity is organized or incorporated under the laws of one or more Indian Tribal government(s) is determined without regard to any specified choice of law or forum. These changes are intended to minimize the administrative burden on Tribes seeking to form or acquire interests in inter-Tribal entities that would generally not be recognized as separate entities under the final regulations.

Lastly, the final regulations retain recognition that Tribal law is established by each individual Tribe. Revised Example 4 provides a general illustration of how the final regulation operates for multi-Tribe entities.

Section 17 Clarification: A commenter requested an edit to proposed § 301.7701-l(a)(4)(i) and explained that the reference to "a Tribe incorporated under Section 17 of the IRA is not an accurate reflection of the nature of a Section 17 corporation." They explained that a Section 17 corporation is created by a Tribe's initiation of a lengthy incorporation process for a corporation with the Department of Interior and the eventual approval of such corporation's charter. They explained that it is the federally chartered corporation, and not a Tribe, that is incorporated under Section 17 of the IRA. They requested the following edit to § 301.7701-l(a)(4)(i).

"(4) Certain Tribal entities-(i) In general. Except as provided in paragraph (a)(4)(ii) of this section, Tribes **federally-chartered corporations** incorporated under section 17 of the Indian Reorganization Act of 1934, as amended, 25 U.S.C. 5124 **by the Bureau of Indian Affairs, as the authorized delegate of the Secretary of the U.S. Department of the Interior, pursuant to a duly-adopted resolution of the Tribal Council of the petitioning Indian Tribe** (section 17 corporation) are not recognized as separate entities for Federal tax purposes .... "

Federal Response: The final regulations address this concern by clarifying reference to Section 17 corporations as follows:

"(4) Certain Tribal entities--(i) In general--(A) Rule. Except as provided in paragraph (a)(4)(ii) and (iii) of this section, section 17 corporations, section 3 corporations, and wholly owned Tribal entities (as defined, respectively, in paragraphs (a)(4)(i)(B) through (D) of this section) are not recognized as separate entities for Federal tax purposes and, therefore, are not subject to Federal income tax."

2. **The NPRM recognizes that Tribally chartered entities are not recognized as separate from their owning Tribe(s) for Federal tax purposes.**

   a. **How should this impact employment and excise tax? Should Tribally chartered entities remain separate for excise and employment tax liability?**

The majority of commenters expressed that Tribally chartered entities should be treated as separate entities for employment and excise tax purposes because Tribes create these entities to limit risks to the Tribal government. Commenters noted that many of these entities have separate Employer Identification Numbers (EIN) and disregarding these entities for employment and excise tax liability would create confusion and disruption in Tribal operations. Additionally, commenters highlighted that their recommendation is consistent with how disregarded entities are treated under current tax regulations[1] and how Section 17 corporations are treated under case law. [2]

In contrast, some commenters expressed that a Tribe should have the ability to elect to disregard the employment and excise tax liability. They expressed that Tribes may have a variety of reasons for such election depending on their governmental structure and for commercial reasons. They highlighted that as a sovereign, Tribes should be given deference in electing a specific tax treatment.

For those that supported separate employment and excise tax treatment, some commenters proposed specific edits to the entity classification regulations because they noted that § 301.7701-2(c)(2)(i), (iv), and (v) applies to a "business entity" with a single owner. They explained that because § 301.7701-2(a) defines a "business entity" as an entity recognized for federal tax purposes, these sections would not be clearly applicable to a wholly owned Tribally chartered entity, Section 17 Corporation, or Section 3 Corporation, which are not recognized as separate entities for federal tax purposes under proposed § 301.7701-1(a)(4). These commenters requested the following edits:

1. Commenters cited to 26 C.F.R. § 301.7701-2(c)(2)(iv) "Paragraph (c)(2)(i) of this section (relating to certain wholly owned entities) does not apply to taxes imposed under Subtitle C-Employment Taxes and Collection of Income Tax (Chapters 21. 22. 23. 23A. 2-l. and 25 of the Internal Revenue Code).").
2. Commenters cited to Blue Lake Rancheria Economic Development Corporation v. Commissioner, 152 T.C. No. 5 (2019).

Section 301.7701-2(c)(2)(iv)

(iv) Special rule for employment tax purposes—

A. In general. Except as provided in paragraph (c)(2)(iv)(C) of this section, paragraph (c)(2)(i) of this section (relating to certain wholly owned entities) **and Section 301.7701-1(a)(4)(i) (relating to certain Tribal entities)** does not apply to taxes imposed under Subtitle C—Employment Taxes and Collection of Income Tax (Chapters 21, 22, 23, 23A, 24, and 25 of the Internal Revenue Code).

B. Treatment of entity. Except as provided in paragraph (c)(2)(iv)(C) of this section, an entity **described in section 301.7701-1(a)(4)(i) or** that is disregarded as an entity separate from its owner for any purpose under this section is treated as a corporation with respect to taxes imposed under Subtitle C—Employment Taxes and Collection of Income Tax (Chapters 21, 22, 23, 23A, 24, and 25 of the Internal Revenue Code). For special rules regarding the application of certain employment tax exceptions, see §§ 31.3121(b)(3)–1(d), 31.3127–1(b), and 31.3306(c)(5)–1(d) of this chapter.

Section 301.7701-2(c)(2)(v)

(v) Special rule for certain excise tax purposes—(A) In general. Paragraph (c)(2)(i) of this section (relating to certain wholly owned entities) **and Section 301.7701-1(a)(4)(i) (relating to certain Tribal entities)** does not apply for purposes of—

1. Federal tax liabilities imposed by Chapters 31, 32 (other than section 4181), 33, 34, 35, 36 (other than section 4461), 38, and 49 of the Internal Revenue Code, or any floor stocks tax imposed on articles subject to any of these taxes;
2. Collection of tax imposed by Chapters 33 and 49 of the Internal Revenue Code;
3. Registration under sections 4101, 4222, and 4412;
4. Claims of a credit (other than a credit under section 34), refund, or payment related to a tax described in paragraph (c)(2)(v)(A)(1) of this section or under section 6426 or 6427; and
5. Assessment and collection of an assessable payment imposed by section 4980H and reporting required by section 6056.

(B) Treatment of entity. An entity **described in section 301.7701- 1(a)(4)(i) or** that is disregarded as an entity separate from its owner for any purpose under this section is treated as a corporation with respect to items described in paragraph (c)(2)(v)(A) of this section.

In order to harmonize the NPRM with these administrative amendments, the commenters recommended the following change to proposed Section 301.7701-1(a)(4)(i):

Except as provided in paragraph (a)(4)(ii) of this section **and in section 301.7701-2(c)(2)(iv)-(v)**, Tribes incorporated under section 17 of the Indian Reorganization Act of 1934, as amended, 25 U.S.C. 5124 (section 17 corporation), or under section 3 of the Oklahoma Indian Welfare Act, as amended, 25 U.S.C. 5203 (section 3 corporation), are not recognized as separate entities for Federal tax purposes. Also,

except as provided in paragraph (a)(4)(ii) of this section **and in section 301.7701-2(c)(2)(iv)-(v)**, entities wholly owned by one or more Indian Tribal governments (within the meaning of section 7701(a)(40) of the Code) and organized or incorporated exclusively under the laws of the Indian Tribal government(s) that own them (wholly owned Tribal entity) are not recognized as separate entities for Federal tax purposes.

Federal Response: The Department agrees with the recommendation of the commenters to treat section 17 corporations, section 3 corporations, and wholly owned Tribal entities as entities separate from the Tribe(s) that own them for Federal employment and excise tax purposes.

Specifically, while the final regulations in § 301.7701-1(a)(4)(i) provide the general rule that section 17 corporations, section 3 corporations, and wholly owned Tribal entities are not recognized as separate entities for Federal tax purposes, the final regulations in § 301.7701-1(a)(4)(iii) provide an exception under which such entities are treated as separate entities for Federal employment and certain Federal excise tax purposes. This aligns the treatment of Tribal entities with other disregarded entities in § 301.7701-2(c)(2)(iv) and (v) which provides that disregarded entities are treated separately for employment and excise taxes.

This approach would generally not subject Tribes to liability for Federal employment owed with respect to employees performing services for their wholly owned Tribal entities, a result that many commenters support. It similarly would enable Tribal governments to limit excise tax liability for their Tribal entities. This approach also minimizes administrative burdens, particularly for inter-Tribal entities.

The Department declines to adopt the suggestion commenters that Tribes be allowed to elect the treatment of wholly owned Tribal entities for employment and Federal excise tax purposes because an ad hoc approach to liability would cause confusion for Tribes and negatively impact tax administration.

b. Should Tribally chartered entities be able to assert the excise tax benefits of their owning Tribes?

The majority of commenters stated that a Tribally chartered entity should be able to assert the excise tax benefits of its owning Tribe because Tribes normally extend their benefits and privileges to these entities. Commenters noted that the NPRM's preamble recognizes that Tribally chartered entities serve an important governmental function—revenue generation—for their Tribes and should be allowed to satisfy the same excise tax tests applicable to their owning Tribe.

Some commenters proposed the following language be added as a new § 301.7701-1(a)(4)(iii):

> Special Rule – An entity described in § 301.7701-1(a)(4)(i) with one or more owners shall be treated as a disregarded entity with a single owner for the purpose of classification of such entity for Federal tax purposes under §§ 301.7701-1-301.7701-3 and shall be treated as an "Indian tribal government" for the purpose of determining an exemption from certain excise taxes as set forth in § 305.7871-1.

Some commenters requested that a Tribally chartered entity be deemed a "subdivision" under section 7871 for assertion of the special rule for excise tax provisions.

Additionally, some commenters requested that employment tax benefits applicable to a Tribe be extended to a wholly owned Tribally chartered entity. These commenters expressly requested that Federal Insurance Contributions Act (FICA) and Federal Unemployment Tax Act (FUTA) tax benefits applicable to Tribes be applied to wholly owned Tribally chartered entities.

Federal Response: The Department appreciates Tribal feedback on this issue. The final regulations do not incorporate these recommendations because Section 7871 and any regulations thereunder are outside the scope of the rulemaking. The final regulations do not affect existing law under section 7871 or the availability of the section 7871(a)(2) exemption from certain Federal excise taxes for Tribes, section 17 corporations, section 3 corporations, or wholly owned Tribal entities.

With regard to employment tax, the final regulations explain that there are some Federal employment tax provisions that specifically apply to services performed in the employ of a Tribe. For example, an exception from FUTA taxes exists for service performed in the employ of a Tribe, or any instrumentality that is wholly owned by a Tribe.

Section 3306(u) provides that, for FUTA purposes, the term "Indian tribe" has the meaning given to such term by section 4(e) of the Indian Self-Determination and Education Assistance Act (codified at 25 U.S.C. § 5304(e)), and includes any subdivision, subsidiary, or business enterprise wholly owned by such an Indian tribe. 25 U.S.C § 5304(e) provides that "Indian Tribe" means, inter alia, any Indian tribe, band, nation, or other organized group or community which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

Accordingly, even though wholly owned Tribal entities are treated as separate from the Tribes for employment tax purposes, they remain eligible for the FUTA tax exception in section 3306(c)(7) because section 3306(u) makes it clear that for purposes of FUTA tax, the term "Indian Tribe" has the meaning given to such term by 25 U.S.C. § 5304(e) and includes "any subdivision, subsidiary, or business enterprise wholly owned by such an Indian tribe." As an example, if a Tribe establishes a wholly owned Tribal entity, under the final regulations, it will generally be treated as a separate corporation for Federal employment tax purposes, but it will be treated as an Indian Tribe for purposes of the FUTA tax exception provided by section 3306(c)(7) because it is a subdivision, subsidiary, or business enterprise wholly owned by the Tribe as defined in section 3306(u).

3. **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 majority of commenters appreciated the examples that were provided and found them to be practical and appreciated the Department refraining from framing the examples in the negative. Commenters emphasized that illustrative examples promote flexibility and increased understanding, but cautioned that the final regulations must avoid creating negative inferences through the use of restrictive examples. Requests for additional examples or clarifications, involved the below topics.

Limited Liability Company (LLCs): The majority of commenters supported a separate illustrative example specific to LLCs because of the prevalence of this business organization method. Commenters also noted that only Example 3 contains a reference to LLCs, when the other examples appear applicable to LLCs. They requested that the final regulations confirm that the analysis applied in all Tribal-corporation specific examples would apply if the entity was an LLC. Some commenters proposed the following as a new LLC example:

> (A) Example 5. Tribe B forms Limited Liability Company X pursuant to Tribe B's Limited Liability Company Ordinance, which governs the purpose, formation, and operation of commercial entities. Tribe B is the sole member of Limited Liability Company X. Limited Liability Company X is therefore wholly owned by Tribe B and organized exclusively under the laws of Tribe B. As a result, Limited Liability Company X is not recognized as a separate entity from Tribe B for Federal tax purposes, except

for the purposes described in §1.6417-1(c)(7) of this chapter. Accordingly, Limited Liability Company X is not subject to Federal income tax. Under §1.6417-1(c)(7) of this chapter, Limited Liability Company X is treated as an instrumentality of Tribe B for the purposes of making a section 6417 election (including determining eligibility for and the consequences of such election). Thus, Limited Liability Company X, rather than Tribe B, would be the applicable entity for purposes of making a section 6417 election for any applicable credit (as defined in section 6417(b)) relating to property held or activities conducted by Limited Liability Company X.

Federal Response: The Department understands the need for certainty in this area. Therefore, the final regulations adopt the general comments that the examples provided in the regulation should explicitly state that the rules apply equally to Tribally organized LLCs.

Subsidiary Clarification: Many commenters requested that Example 2 be revised to make clear that the example involves a holding company and a subsidiary.

Federal Response: Revising the example as suggested by the commenters to specify that Example 2 involves a holding company and a subsidiary would unnecessarily narrow the scope and relevancy of this example, which was intended to be a general illustration. Therefore, the final regulations do not adopt this comment.

Excise and Employment Taxes: Commenters requested that the final regulations contain an example that reflects the separate treatment of employment and excise tax liability. One commenter recommended the following scenario be made into an example:

A Tribally chartered entity has an employment tax liability and neither its parent with one hundred (100) percent ownership, also a Tribally chartered entity, nor the Tribe wholly owning the parent, has such employment tax liability.

Commenters also requested that this example include an assertion of excise tax benefits from a Tribally chartered entity under section 7871.

Federal Response: The final regulations add clarification with respect to employment and excise tax liability into the example scenarios.

Partnership Example: One commenter requested the following be added as an example to ensure Tribes have confirmation that Tribally chartered entities retain their disregarded status when they partner with other entities.

Example 6. Tribe B forms Limited Liability Company X pursuant to Tribe B's Limited Liability Company Ordinance, which governs the purpose, formation, and operation of commercial entities. Tribe B is the sole member of Limited Liability Company X. Limited Liability Company X is therefore wholly owned by Tribe B and organized exclusively under the laws of Tribe B. Limited Liability Company X enters into a partnership - Partnership Y - with Corporation Z. Corporation Z is a for-profit corporation formed under state law. Because Limited Liability Company X is wholly owned by Tribe B, it is not recognized as a separate entity from Tribe B for Federal income tax purposes.

Federal Response: Though the final regulations do not add such an example, the Department confirms that the Federal tax status of a Tribally organized LLC would not be affected by holding an interest in a partnership regardless of who the other partners in the partnership were.

4. **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?**

All commenters supported the provision that allows Tribes to rely on this guidance and explained that Tribally chartered entities have been in existence for decades. They requested that this be retained in the final regulations.

Many commenters requested clarification on how the department will implement the consistency requirement in the proposed rule. Commenters requested that IRS defer to a Tribe's determination as to whether it has consistently applied § 301.7701-1(a)(4) for purposes of relying on that provision for previous tax years. They explained that providing deference would respect Tribal sovereignty and self- governance and reduce administrative burdens. These commenters requested the following edit to proposed § 301.7701-1(f)(2)(i):

> (2) Exceptions—(i) Paragraph (a)(4) of this section. The rules of paragraph (a)(4) of this section apply to taxable years ending after October 9, 2024. In general, an entity may choose to apply paragraph (a)(4) of this section to taxable years ending on or before October 9, 2024 if **the Indian Tribal government(s) that own the entity also apply paragraph (a)(4) of this section consistently with such entity for all such taxable years. The Indian Tribal government(s) that own the entity described in paragraph (a)(4) has sole discretion to determine whether the entity consistently applied paragraph (a)(4) for all taxable years on or before October 9, 2024 and the Internal Revenue Service will defer to the Indian Tribal government determination that the entity consistently applied paragraph (a)(4) for all taxable years on or before October 9, 2024.** However, an entity may not choose to apply paragraph (a)(4) of this section to any taxable period for a Federal excise tax or Federal employment tax with respect to which the entity was, as of October 9, 2024, a party to any administrative or judicial proceeding.

Additionally, a minority of commenters requested that IRS develop a streamlined refund process for wholly owned Tribally chartered entities in the event that an entity paid income taxes for a period before the NPRM's publication date.

Federal Response: To avoid confusion, the final regulations remove the "consistency" reference and instead provides the following:

> (2) Exceptions--(i) Paragraph (a)(4) of this section. The rules of paragraph (a)(4) of this section apply to taxable periods beginning on or after January 1, 2026. An entity may choose to apply paragraph (a)(4) of this section to taxable periods beginning before January 1, 2026, for which the applicable period of limitations is open.

Regarding a refund process, the preamble of the final regulations provides that Federal income tax refund requests may be processed under the general principles of tax administration. In particular, wholly owned Tribal entities that choose to apply the final regulations retroactively may seek income tax refunds by filing Form 1120-X, Amended U.S. Corporation Income Tax Return, for tax years for which the applicable period of limitations is open and obtain the assistance of the Indian Tribal Governments office of the Tax Exempt and Government Entities Division of the IRS to process their refund requests.

5. **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?**

The majority of commenters supported the issuance of subsequent guidance on partially owned entities and requested that Treasury work with the TTAC and engage in consultation prior to issuing any final guidance. Commenters expressed that guidance on partially owned entities is crucial to providing the necessary clarity to promote economic development in Tribal communities through non-Tribal investment due to the lack of access to capital in Tribal communities. Commenters explained that many outside investors are reluctant to provide capital for Tribal economic development because of the lack of clarity regarding partially owned Tribal entities in Tribal majority-controlled corporations and joint ventures.

Federal Response: The preamble of the final regulations provides that the Department continues to consider possible guidance on the Federal tax treatment of corporations incorporated under Tribal law that are owned in part by persons other than Tribes. Further, the final regulations confirm that the Department would conduct Tribal consultation prior to issuing any guidance in that area.

6. **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?**

Commenters broadly supported the NPRM's proposed treatment of Tribally chartered entities as instrumentalities for the purpose of section 6417 eligibility and appreciated the proposed rules consideration of administrative constraints. Some commenters requested that for credit property owned by a Tribally chartered entity, that Tribes be able to elect whether to file for a section 6417 credit through the Tribe or as an instrumentality. One commenter requested that Tribes also be eligible for transfer credit monetization because the transfer market offers more finance and supply chain opportunities.

Federal Response: The final regulations retain the treatment of Tribally chartered entities as instrumentalities for the limited purpose of section 6417 implementation. The final regulations do not adopt the request to enable Tribes to choose between filing as the Tribal government versus an instrumentality for applicable credit properties owned by their Tribally chartered entities. The final regulations do not adopt this suggestion, consistent with the view of most commenters who supported the rule providing that the wholly owned Tribal entity that is treated as an instrumentality must make the election. There also are additional administrative benefits gained for both Tribes and the IRS by having certainty on how to file elective payment elections. For example, it will be clear that the wholly owned Tribal entity makes the elective payment election when an entity is wholly owned by multiple tribes. Thus, the final regulations provide that a wholly owned Tribal entity is treated as an instrumentality of an Indian Tribal government and such instrumentality (and not the Indian Tribal government) would make the elective payment election.

Regarding monetization, Tribal governments (and their instrumentalities, pursuant to the final regulations) are listed as applicable entities under sections 6417(d)(1)(A)(iv) and 6418(f)(2) expressly provides that an eligible taxpayer for transferability under section 6418 is any taxpayer not listed in section 6417(d)(1)(A). Thus, Tribal governments (and their instrumentalities) are only allowed to make elective payment elections under section 6417. As the comment requesting the option to use section 6418 and the other comments suggesting additional section 6418 changes would require statutory revisions, the final regulations do not adopt the commenters' suggestions.

7. What other questions or comments do Tribes have regarding this NPRM?

Some commenters requested that the final regulations not be limited to entities chartered under Tribal law and include entities chartered under state law that are wholly owned by a Tribe. They explained that the focus of inquiry should be whether a Tribe completely owns an entity, rather than where it is chartered. They also explained that prior IRS guidance on state-chartered entities does not explain why wholly owned Tribal corporations should be subject to income tax based on their location of incorporation.

Federal Response: The Department appreciates this feedback. The Federal tax treatment of State-chartered entities is outside the scope of the regulations, and, therefore, the final regulations do not adopt these comments.