

Lower 48 tax ruling could affect Alaska

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Native contributions to traditional religious functions such as stick dances and nalukataq may be tax deductible items as a result of an Internal Revenue Service agreement settled in U.S. Tax Court on Nov. 29.

The Regional Counsel for the IRS in Washington, D.C., informed the court that the IRS had agreed to claims made

by a member of the Montana Native American Church.

The Institute for the Development of Indian Law in Washington, D.C., initiated this litigation as a test case for the 1978 American Indian Religious Freedom Act. The act calls on federal agencies to become more sensitive to Native American Indian religious concerns, and requires that Native religions be granted the

same respect as non-Native religions.

Many of the Alaskan Native religious traditions and customs would probably qualify under the IRS code due to the costs incurred and the spiritual nature of the feasts and giveaway ceremonies.

Bruce Brunsvold of Brunsvold & Dickinson, an Anchorage Certified Public Accounting firm, said that "facts would

have to be compared with the Native American Church case, and if the situation is similar, a person would probably be justified in taking the deduction."

For instance, a Stick Dance ceremony "would probably qualify based on that ruling," he said. However, "there is a lot of judgment involved and individual facts surrounding a ceremony must be studied

closely."

One bank official, Mike Harper of United Bank Alaska, said that it is a "very private matter between the individual and the government, so if things like that happen, we are not aware of it."

Harold Esmailka of Ruby, who had never considered this deduction in his tax claims, expressed interest and said, "it
(Continued on Page Six)

Ruling may affect status of giveaway

(Continued from Page One)
sounds really good." He and his wife, Florence, spent several thousand dollars in one event recently.

"If a case involves a large amount of money, a person should go to an attorney or CPA to get some advice," Bruns vold said.

Elders who give potlatches and other traditional customs sometimes have little money and their yearly income level does not require the filing of a tax claim, said Bee Halkett of the Alaska Native Foundation.

However, a new law that came into effect in 1982 would allow individuals who do not itemize their expenses to claim up to \$25 of their total religious contribution.

In order to make it worthwhile to itemize deductions, an individual must have at least \$2,300 in total deductions; while a couple filing jointly must have \$3,400. These include all deductible amounts, besides charitable contributions, such as medical, state & local taxes, interest paid, casualty and theft losses, and other miscellaneous items.

In the Montana Native American Church situation, Barney Old Coyote, a Crow Indian, incurred costs of \$2,240 worth of charitable contributions, which included the traditional noon-day feast and give-away that are a part of the ceremony.

The IRS questioned whether the give-away was integral to the ceremony and not just a secular aspect of Crow culture. IRS also questioned whether the give-away and feasts were social events for the benefit of the sponsor and thus similar to wedding celebrations for

which contributions are not allowed under the IRS code.

Through testimony Old Coyote and other members of the Crow Chapter of the Native American Church, were able to relate the importance of the functions as a means of gaining peace of mind by rewarding those who offer prayers for the sponsor of the particular ceremony.

Previously, the IRS had disputed whether the Native American Church of Montana Crow Chapter could properly be designated as a church for purposes of the IRS code, but Institute lawyer Pauline Girvin pointed out that the "Indian Religious Freedom Act embodies a federal policy statement supportive of non-infringement on Native American Indian Religious Practices."

She said that the IRS' concession to the viability of contributions made to the Native American Church is an affirmation of the policy requiring federal agencies to respect Native religious freedom.

"The settlement reached in favor of my client was attained after a long uphill battle against culture bias," she said. "This bias was reflected in the suspicion of the IRS agents who chose to deny the contributions in the first instance and continued in the questions posed by the IRS attorney who sought to pigeon-hole the Native American Church into the hierarchical structure of Judeo-Christian religions.

"A major obstacle in convincing the IRS was that the Native American Church doctrine is not defined by ancient writing but as an oral tradition of the Crow Tribe. I commend Barney Old Coyote for his in the face of what can only be patience and spiritual strength

characterized as condescending inquiries into the viability of his religious practices," she said.

"I cannot imagine any practitioner of a dominant society religion being so thoroughly grilled by IRS representatives on the viability of his faith. The Indian Religious Freedom Act is needed as a constant reminder to federal officials that Indian religions are to be afforded the same respect as non-Indian religions," Girvin said.

The Institute for the Development of Indian Law was founded as a non-profit public interest law firm in 1971. Girvin was involved with mining litigation under the Alaskan Native Claims Settlement Act.

Kirke Kickingbird, an Oklahoma Kiowa and executive director at the Institute, who also worked on the case noted: "At the time that Congress considered passage of the Indian Religious Freedom Act, some Congressmen felt that the legislation was not necessary because Indian religious freedom was protected by the Bill of Rights. While that may be true in the abstract, the protection of Indian rights is a continuing struggle and the very existence of those rights requires constant re-emphasis. In the last century the religious practices of my tribe were forcibly terminated by the U.S. Cavalry during the Sun Dance celebration in the 1890s. The methods of intrusion on Indian religions are more subtle in this century but equally effective. I'm sure that we all realize that in this century a single representative of the IRS can be as terrifying as a troop of cavalry in the last century."