Unique Aspects of Tribal Government Accounting and Auditing

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Agenda

1. Unique Aspects of Tribal Governance
2. Unique Accounting Issues for Tribes
3. Unique Uniform Guidance Issues
4. Unique Auditing Matters
5. Questions

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Section 01

Unique Aspects of Tribal Governance

- Which of the following types of entity is not considered to be a “Sovereign” government
    a) Federal Government
    b) State Governments
    c) Local Governments
    d) Tribal Governments

Governance

Sovereign domestic dependent Nations

Federally recognized tribal governments in the United States CAN

- Define who qualifies for citizenship/membership in their Tribes.
- Determine their form of government
- Administer justice and enforce their laws (Engagement Letters specifics)
- Tax tribal members
- Preserve the cultural and community heritage such as with language preservation
- Regulate property use within their reservations/jurisdictions
- Issuance of limited waivers of sovereign Immunity
- Establishment of separate legal entities
  - Oklahoma Indian Welfare Act of 1936 - This act was tailored specifically for Oklahoma tribes, many of which had lost formal governance structures due to earlier federal policies like the Dawes Act. The OIWA helped restore their ability to self-govern and engage in economic development under federal oversight
  - Indian Reorganization Act of 1934 authorizes tribes outside of Oklahoma (except Alaskan Native Villages) to setup “Section 17 Corporations” under Section 17 of the Indian Reorganization Act (25 USC Section 5124)
  - Alaska Native Claims Settlement Act (ANCSA), enacted on December 18, 1971, created 12 regional corporations and over 200 village corporations (plus a 13th regional corporation for non-resident Alaska Natives) specific to Alaska Native Villages

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Governance (continued)

Sovereign domestic dependent Nations

Federally recognized tribal governments in the United States typically are NOT:

- Subjected to the laws of a state or local governments
- Subjected to the same federal laws that apply to state and local governments
  - ➢ One big exception is the Uniform Guidance
    - ❖ Most UG regulations are applicable to tribal governments unless specifically exempted
    - ❖ Indian-Self Determination and Education Assistance Act (Public Law 93-638 or “638 Tribes”)
    - ❖ UG Cluster of Programs called the “477 Cluster” is specific to tribal governments
  - ➢ IRS tax code is even more confusing
    - ❖ Sometimes tribal governments are referenced in the code and sometimes they aren’t
    - ❖ COVID-19 stay at home orders and the Employee Retention Tax Credits
- Taxable by state and local governments

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Governance (continued)

Sources of Funding Differences

State and Local Gov't

Property Taxes

Sales Taxes

Tribal Gov't

Federal Grants/Contracts

Business Enterprises

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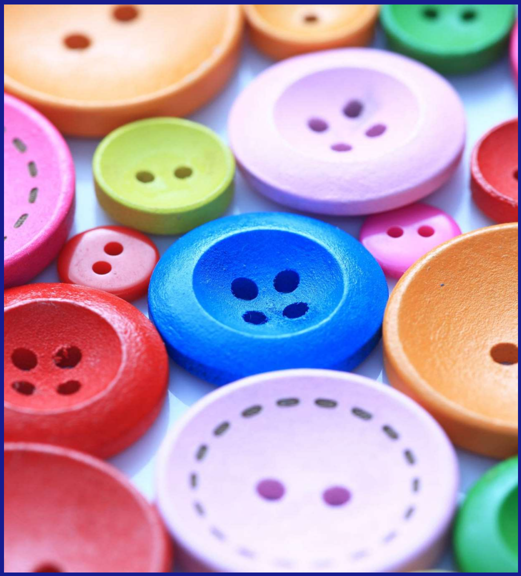
Unique Accounting Issues for Tribes

- Which of the following sets of accounting standards do not apply to Tribes or their component units
  a) FASB
  b) GASB
  c) IFRS
  d) FASAB



Unique Accounting Issues for Tribes

Definition of a Government

- Public corporations and bodies corporate and politic are governmental organizations. Other organizations are governmental organizations if they have one or more of the characteristics listed below as defined by GASB Codification 1000.81:
  - Popular election of officers or appointment (or approval) of a controlling majority of the members of the organization's governing body by officials of one or more state or local governments.
  - The potential for unilateral dissolution by a government with the net assets reverting to a government.
  - The power to enact and enforce a tax levy.
- While tribes may differ in organizational structure and governance from state and local governments, they are all governmental entities under the definition.
- As a result of the sources of funding, tribal governments do not fit neatly into the current financial reporting structures.

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Unique Accounting Issues for Tribes (continued)

Types of Governmental Funds

- General fund: Working capital available for general governmental use and similar to most governmental entities
- Special revenue funds: General governmental financial resources restricted for specific purposes. Most state and local governments segregate theirs by tax sources, tribes are usually setup by grant agency sources
- Debt service funds: Resources to be used to pay principal, interest, and charges on long-term debt. Similar to all governments
- Capital projects funds: Resources used to construct or acquire major governmental fixed assets. Similar to all governments
- Permanent funds: Resources are restricted, but earnings benefit government or citizens. These may have a few different types
  - Minor's Trusts
  - Endowments
  - Judicial related and similar to State government more so than local governments

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Unique Accounting Issues for Tribes (continued)

Types of Proprietary Funds

- Enterprise Funds: Provide goods or services on a business type basis primarily for external customers
  - Casino Gaming Activities
  - Federal Contracting Activities
  - Ranches and Food Sovereignty Programs
  - Private Equity Activities
  - Convenience Stores
  - Captive Insurance companies
  - Unlike state and local governments most enterprise activities of a Tribe aren’t to provide services to it’s citizens such as utilities or entertainment activities but to make a profit similar to a for-profit business to support the governmental activities
- Internal service funds: Provide goods or services on a business type basis primarily for internal customers
  - Indirect Cost Pools
  - Space Cost Allocation Pools

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Unique Accounting Issues for Tribes (continued)

Component Units

- Legally separate entities for which the tribe is financially accountable
- Discretely presented component units
  - Presented separately from the primary government in the financial statement
- Blended component units
- Presented as part of the tribe in the financial statements if presented the entirety of the government (Government-Wide)

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Unique Accounting Issues for Tribes (continued)

Component Units

- Examples include:
  - Tribal Housing Authorities (TDHEs)
  - Healthcare entities
  - Economic Development Authorities
  - For-profit enterprises (e.g. gaming activities)
  - Colleges

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Unique Accounting Issues for Tribes (continued)

Component Units

- The relationship of the tribal council to the governing body/board of the component unit is important to determine whether the component unit should be blended or a discrete component unit and what accounting standards apply. Therefore, not all tribes will have the same financial reporting.

  Scenario 1: A tribal enterprise entity has a board makeup that includes 5 tribal council members in addition to 1 other board member appointed by the Tribal Chief. In this situation, even if the enterprise is established as a legally separate entity, it might still be a blended component unit. GASB standards would likely apply to the financial reporting of the entity because based on the definition of a government the majority of the board is made up of elected officials (tribal council members) and 1 that is appointed by an elected official (Tribal Chief)

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Unique Accounting Issues for Tribes (continued)

Component Units

Scenario 2: A tribal enterprise entity has a board makeup that includes 8 tribal members all of which are appointed by the Tribal Chief. In this situation, if the enterprise is established as a legally separate entity, it might be a discretely presented component unit because the makeup of the enterprise board is not substantially the same as the makeup of the tribal council. GASB standards would likely also apply to the financial reporting entity because based on the definition of a government the majority of the board is made up of 8 individuals that are appointed by an elected official (Tribal Chief)

Scenario 3: A wholly owned tribal enterprise entity has an initial board makeup of 8 individuals appointed by the Tribal Chief. However, after the initial appointment, the board members directly approve replacements (self-perpetuate) and do not need approval from the Tribal Chief or Tribal Council. Additionally, the enterprise has outstanding debt with a national financial institution that is guaranteed by the Tribe and is incorporated under State law and cannot be dissolved without approval from the financial institution and the BIA. In this scenario since the entity is wholly owned by the Tribe and the Tribe is fiscally responsible to guarantee the debt it is likely still a discretely presented component unit. However, the enterprise might need to complete its financial reporting under FASB standards since the board is now self-perpetuating and the Tribe cannot dissolve the entity without the approval of an outside party.

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Unique Accounting Issues for Tribes (continued)

Other unique areas of accounting

- Tribal enterprises, although established to make a profit, generally must follow GASB guidance
- GASB 72 *Fair Value Measurement and Application* challenges
  - Why was the enterprise established?
  - What does the ownership structure involve?
- Unearned Revenue accounting for self-governance grants
- Purchase/Referred Care liabilities
- Lease Implementation challenges with the federal government

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03

Unique Uniform Guidance Issues

- Tribes are similar to local governments under federal regulations for administering federal programs
    a) True
    b) False

Unique Uniform Guidance Issues

Indian Self-Determination and Education Assistance Act (ISDEAA)

Commonly referred to by its public law number ***P.L. 93-638 or "638 Tribes"***

It is the foundational federal law that allows tribes and tribal organizations to take over the administration of federal programs that serve their communities.

- Examples of common terms associated with "638 Tribes"
  - **638 Contracts**: Refers to contracts authorized under Title I of ISDEAA, where tribes contract with federal agencies (like the Indian Health Service or Bureau of Indian Affairs) to operate programs the federal government would otherwise operate
  - **Self-Governance Compacts:** Under Title V (for health programs) and Title IV (for DOI programs), tribes can enter into "compacts" that give them broader authority and flexibility over program design and implementation
  - **105(l) Lease Agreements**: These allow tribes to lease their facilities to federal agencies and receive reimbursement, often used in conjunction with 638 contracts

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Unique Uniform Guidance Issues

Other unique characteristics

- Program Income from Health Services programs
- Research and Development Cluster
- Compliance Supplements do not exist or do not clarify unique tribal issues
- 102-477 Cluster of Programs
- Schedule of Expenditures of Federal Awards
- Which federal regulations apply and which ones get trumped
- COVID-19 (it's almost over)

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04

Unique Auditing Matters

- An unmodified audit opinion of a tribal enterprise can be issued under GAAS if they present their financial statements under FASB standards but are supposed to present them under GASB standards
  a) Yes
  b) No
  c) It depends
  d) At this point I don’t care

Unique Auditing Matters

Opinions

Common types of audit opinions issued for tribes:

- Unmodified Opinions – Financial Statements taken as a whole present fairly the financial position, result of operations, and cash flows in conformity with GAAP
- Qualified Opinions – Except for the effects of a particular matter, the financial statements present fairly the financial position, results of operations, and cash flows in conformity with GAAP
- Adverse Opinions – Financial Statements do not present fairly the financial position, result of operations, and cash flows in conformity with GAAP
- Disclaimer of Opinion – Auditor does not express an opinion
- Dual Audit Opinion – Auditors issue 1) an adverse opinion on generally accepted accounting principles (GASB) and 2) a clean opinion on compliance with FASB standards

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Unique Auditing Matters (Continued)

Opinions

- In 2017 the AICPA released new *Technical Questions and Answers which provided that the implication of selecting the FASB framework by a tribal business that meets the definition of a government should receive a "dual audit opinion."*
  - 1) an adverse opinion on generally accepted accounting principles (GASB) financials and 2) a clean opinion on compliance with FASB standards

- In August of 2018, the GASB formed a working group to find a long-term financial reporting solution for tribal governments. Indian Country was pushing for a TASB!

- Confusing opinions counteract the objectives of accounting standards and consequently impact the economic health of Indian Country.

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