



INTERNAL REVENUE SERVICE
NATIONAL OFFICE TECHNICAL ADVICE MEMORANDUM

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CASE MIS No.: TAM-111473-99/CC:DOM:IT&A:B2

District Director

October 29, 1999

Taxpayer's Name:
Taxpayer's Identification No:
Years Involved:
Date of Conference:

ISSUE:

Are distributions of Alaska Native Fund proceeds made by the taxpayer to its shareholders subject to information reporting under § 6042 of the Internal Revenue Code?

CONCLUSION:

Because the distributions of Alaska Native Fund proceeds made by the taxpayer to its shareholders were not dividends under § 316, the distributions are not subject to information reporting under § 6042.

FACTS:

The Alaska Native Claims Settlement Act, Pub. L. 92-203, 85 Stat. 688 (codified as amended, 43 U.S.C. §§ 1601-1629) (Act) was enacted to settle all aboriginal land claims by Natives and Native Groups of Alaska. Under the Act Natives received cash and land, distributed through Regional and Village Corporations. These corporations were established under Alaska law, in accordance with the provisions of the Act, and their shareholders are Natives. Section 6 of the Act established an Alaska Native Fund (ANF), and section 7 provided for its distribution by Regional Corporations among its shareholders, i.e., Alaska Natives.

Section 21(a) of the Act provides that:

Revenues originating from the Alaska Native Fund shall not be subject to any form of Federal, State, or local taxation at the time of receipt by a Regional Corporation, Village Corporation, or individual Native through dividend distributions This exemption shall not apply to income from the investment of such revenues.

The taxpayer is a Regional Corporation that made certain distributions to its shareholders in 1996. For purposes of this memorandum, we are assuming that such distributions were made from the Alaska Native Fund (ANF proceeds). In an examination of the taxpayer, the examining agent questioned why the taxpayer did not file Form 5452, *Corporate Report of Nondividend Distributions*, and Forms 1099-DIV, *Dividends and Distributions*, reporting the distribution of ANF proceeds to its shareholders. Form 5452 requires a corporation to report the total amount of distributions paid during the year, the amount of distributions paid from current and accumulated earnings and profits, and the amount of distributions paid from sources other than earnings and profits. The instructions for Form 5452 state that corporations are to complete and file the form if nondividend distributions are made to shareholders under § 301.¹ Form 5452 is based on Rev. Proc. 75-17, 1975-1 C.B. 677, which describes data to be filed by a corporation.² Section 3 of Rev. Proc. 75-17 cites § 6042(d) as its authority.

Section 6042(d) is also the authority for Form 1099-DIV, which requires the reporting of nontaxable distributions. The agent asserts that the taxpayer's distributions in 1996 were distributions under § 301 and, therefore, subject to information reporting.

LAW AND ANALYSIS:

Section 301 determines the treatment of distributions of property made by a corporation to a shareholder with respect to its stock. Under § 301(c)(1) the portion of a distribution that is a dividend (as defined in § 316) shall be included in gross income. Under § 301(c)(2) the portion of a distribution that is not a dividend shall be applied against and reduce the adjusted basis of stock.

Generally, § 316 defines the term "dividend" as any distribution of property made by a corporation to its shareholders out of its earnings and profits accumulated after February 28, 1913, or out of its earnings and profits of the taxable year.

Under § 6042(a) every person who makes payments of dividends aggregating \$10 or more to any other person during any calendar year shall make a return according to the forms or regulations prescribed by the Secretary. Section 6042(b) and § 1.6042-3 of the Income Tax Regulations define the term "dividend" as any distribution made by a corporation, which is a dividend as defined in § 316.

¹ The instructions also state that the form is to be completed if nondividend distributions are made to shareholders under §§ 1368(c)(3) or 1371(e), but neither of these provisions is relevant here.

² Section 4 of Rev. Proc. 75-17 states that it is applicable to distributions under § 301 that are wholly or partly nontaxable as dividends.

Section 6042(d) provides that every corporation shall, when required by the Secretary, furnish a statement setting forth (1) the name and address of each shareholder and the number of shares owned by each shareholder, (2) such facts as will enable the Secretary to determine the portion of the earnings and profits of the corporation accumulated during such periods as the Secretary may specify, which have been distributed or ordered to be distributed, respectively, to its shareholders during such taxable years as the Secretary may specify, and (3) its accumulated earnings and profits and the names and addresses of the individuals or shareholders who would be entitled to such accumulated earnings and profits if divided or distributed, and of the amounts that would be payable to each.

Section 21(a) of the Act, which requires the distribution of ANF proceeds to be free from taxation at the time of receipt, overrides the normal application of § 316, which provides that every distribution is made out of earnings and profits to the extent thereof, and that a distribution made out of earnings and profits is a dividend. As a result, any distribution made by a Regional Corporation of ANF proceeds is nontaxable irrespective of the amount of the corporation's earnings and profits. Thus, the taxpayer's distributions in 1996 of ANF proceeds were not "dividends" within the meaning of § 316.

Form 5452 states that nondividend distributions are considered fully or partially nontaxable as dividends only because the paying corporation's current and accumulated earnings and profits are less than the distributions. That is, the premise underlying the reporting of nondividend distributions on Form 5452 (and nontaxable distributions on Form 1099-DIV) is that these amounts would be dividends (and taxable) if they were made out of the corporation's accumulated and current earnings and profits. However, under the unique circumstances presented, the distributions of ANF proceeds are nontaxable, not because the taxpayer's accumulated and current earnings and profits are less than the amount of the distributions, but because the Act so provides. Thus, since the taxpayer's distributions of ANF proceeds were not dividends (irrespective of the amount of the taxpayer's earnings and profits) by reason of the Act, they are not subject to the information reporting requirements of § 6042(d).³

We note, however, that nothing in the Act conflicts with the application of § 301. Because the distributions are made by a corporation to its shareholders with respect to its stock, § 301 determines the treatment of the distributions of ANF proceeds. In applying the normal rules of § 301(c)(1) and (2), distributions of ANF proceeds are not included in the shareholders' gross income under § 301(c)(1) because they are not dividends within the meaning of § 316. However, as distributions that are not dividends, they are applied against and reduce the basis in the shareholders' stock under §

³ Similarly, because of these unique circumstances, the distributions of ANF proceeds are not within the scope of Rev. Proc. 75-17.

301(c)(2).

The application of § 301(c)(2) is consistent with implementing Congress' intent of exempting from tax only ANF proceeds but not the income from the investment of ANF proceeds. By applying § 301(c)(2) to reduce the bases of the shareholders' shares upon distributions of ANF proceeds, only the income from the investment of the ANF proceeds (not the proceeds themselves) is taxable. Unless § 301(c)(2) applies to distributions of ANF proceeds, the shareholders' bases in the shares would not be reduced, contrary to the intent of the Act.

CAVEAT:

A copy of this technical advice memorandum is to be given to the taxpayer. Section 6110(k)(3) provides that it may not be used or cited as precedent.