

TAM 8111010, 1980 WL 137021 (IRS TAM)

Internal Revenue Service (I.R.S.)

Technical Advice Memorandum

October 30, 1980

Section 61 -- Gross Income v. Not Gross Income  
61.00-00 Gross Income v. Not Gross Income

Legend

Corporation = \*\*\*

Tribe = \*\*\*

District Director

\*\*\*

Taxpayer's Name: \*\*\*

Taxpayer's Address: \*\*\*

Taxpayer's Identification No.: \*\*\*

Years Involved: \*\*\*

Date of Conference: \*\*\*

ISSUE:

Whether, for federal income tax purposes, the Corporation, a federally chartered tribal corporation, is an entity separate and distinct from the Tribe, a recognized Indian tribe and, if it is, whether it is subject to federal income tax.

FACTS:

The Tribe was formally organized under a Constitution and Bylaws on July 11, 1957, pursuant to section 16 of the Indian Reorganization Act (IRA). On that same date, the tribal members also ratified a corporate charter pursuant to section 17 of that Act. Pursuant to that Act, the Assistant Secretary of the Interior approved the Tribe's Constitution and Bylaws and approved the Corporation's Charter of Incorporation on August 21, 1957.

The Tribe's Constitution organized a \*\*\* Council and provided for rules governing Council elections, organized rules for the Council and rules governing membership in the Tribe. The Constitution enumerates the power of the Council and gives the Council various governmental powers. These powers include the right to levy taxes, pass ordinances, maintain a police force, etc.

The Tribe's Charter organized a federal membership corporation consisting of the present and future members of the Tribe. The purpose of the Corporation is to further the economic development of the Tribe. Pursuant to the Charter, each enrolled member of the Tribe is issued a nontransferable certificate of ownership evidencing his or her equal share in the Corporation's assets. Profits from the Corporation's business activities may be distributed per capita among tribal members.

Under the Charter, the management of the Corporation is vested in a Board of Directors composed of four elected members and the chairman of the Council, who shall serve as vice president.

The Tribe's Charter provides that in addition to its powers under its Constitution and Bylaws, the Tribe shall have a limited power of suit in courts of competent jurisdiction within the United States. Although the tribal corporation is granted a limited power of suit, the property of the Tribe is not subject to the levy of any judgment unless tribal

property is specifically pledged or assigned.

#### APPLICABLE LAW:

Section 61 of the Internal Revenue Code provides that gross income means all income from whatever source derived, unless otherwise excluded by law.

Rev. Rul. 67--284, 1967--2 C.B. 55, states that Indian tribes are not taxable entities because the income tax statutes do not tax Indian tribes.

In *Mescalero Apache Tribe v. Jones*, 411 U.S. 145, 157 n. 13 (1973), the Supreme Court indicated that the form of tribal organization is not determinative of tax consequences. The Court stated that 'it is unclear from the record whether the tribe has actually incorporated itself as an Indian chartered corporation pursuant to [section 17 of the IRA] . . . . In any event, the question of tax immunity cannot be made to turn on the particular form in which the tribe chooses to conduct its business.'

#### RATIONALE:

No constitutional or statutory provision exempts Indian tribes from federal income taxation. However, the Service has stated that Indian tribes are not taxable entities and that income tax statutes do not tax Indian tribes. See Rev. Rul. 67--284.

The Corporation was created under a special federal statute authorizing its formation and regulating its operations. The language of the corporate charter of the Tribe demonstrates that the Corporation is not a separate entity but is an integral part of the Tribe. Article IV of the corporate charter provides that the membership of the Corporation consists of the present and future members of the Tribe. Article V of the corporate charter provides that the membership of the governing body of the Tribe and the Corporation are interlocking consisting of all enrolled members of the Tribe. The corporate powers are specifically granted to the Tribe in addition to the governmental powers possessed by the Tribe. Although the tribal corporation is granted the power to sue and be sued, the property of the Tribe is not subject to the levy of any judgment unless tribal property is specifically pledged or assigned. On this basis, we conclude that for federal income tax purposes, the tribal corporation should not be considered as a taxable entity separate and distinct from the Tribe which organized such Corporation and, consequently, shares the Tribe's immunity from federal income tax.

#### CONCLUSIONS:

1. The Corporation, organized under section 17 of the Indian Reorganization Act, is operated as an administrative unit or component part of the Tribe which organized such Corporation and, consequently, shares the Tribe's immunity from federal income tax.
2. The conclusion reached herein applies to the Tribe. The income tax statutes, in imposing the tax on every individual, are broad enough to include individual Indians.

This document may not be used or cited as precedent. Section 6110(j)(3) of the Internal Revenue Code.

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