

PLR 9710011, 1997 WL 100591 (IRS PLR)

Internal Revenue Service (I.R.S.)

Private Letter Ruling

Issue: March 7, 1997
December 2, 1996

Section 61 -- Gross Income v. Not Gross Income
61.00-00 Gross Income v. Not Gross Income
61.32-00 Indians

Section 7805 -- Rules and Regulations
7805.00-00 Rules and Regulations
7805.01-00 Prospective Application of Changes in Regulations
7805.01-01 Prospective Application of Rulings

CC: DOM: IT&A: 3 / PLR-245061-96

LEGEND:

Taxpayer =
State =
Tribe =

Dear ***

This responds to the June 11, 1996, request for a ruling on behalf of Taxpayer. Specifically, Taxpayer requests retroactive relief, pursuant to [§ 7805\(b\) of the Internal Revenue Code](#), from federal income tax on income earned during the period beginning October 1, 1994, and ending September 27, 1995.

Facts

Taxpayer was incorporated under the laws of State in 1982. Taxpayer has always been 100 percent owned by Tribe. In 1987, the Internal Revenue Service issued a private letter ruling to Taxpayer, which held that income from activities carried on within the reservation was not subject to federal income tax. [PLR 8802017](#). Taxpayer's private letter ruling was effectively revoked by the issuance of [Rev. Rul. 94-16](#). After [Rev. Rul. 94-16](#) was issued in March 1994, Taxpayer corresponded with the Service to request withdrawal or modification of the revenue ruling. The Service replied approximately 2 months later, denying Taxpayer's request. Thereafter, the managers and directors of Taxpayer evaluated the organizational options available under [Rev. Rul. 94-16](#) for Tribe to retain the non-taxable status of Taxpayer's business activities. On August 22, 1994, Taxpayer's board of directors approved the preparation of documents necessary to request a corporate charter under section 17 of the Indian Reorganization Act of 1934 (IRA). A draft corporate charter was prepared in September 1994. The draft was reviewed by Taxpayer's management and revised in early November 1994. In early December 1994, the Tribal Council of Tribe adopted a resolution petitioning the Secretary of the Interior to issue a federal charter of incorporation to Tribe for Taxpayer. The petition and proposed charter of incorporation were submitted to the Bureau of Indian Affairs (BIA) and reviewed by the area office. The petition was then forwarded to the Washington, D.C. office of the Department of the Interior. The Secretary of the

Interior took final action to approve the federal charter on May 31, 1995. Pursuant to federal law, the charter issued by the Secretary of the Interior did not become effective until it was ratified by the Tribal Council of Tribe. The Tribal Council typically meets on a monthly or bi-monthly basis. However, the Council rarely meets between the summer solstice and the end of August each year. The Tribal Council met on September 13, 1995, and ratified the federal charter of incorporation. In August 1995, Taxpayer's management drafted a plan of merger between the state-chartered corporation and the anticipated federally chartered corporation. On September 14, 1995, one day after the Tribal Council acted to ratify the federal charter, the board of directors of the state-chartered corporation and the board of directors of the federally chartered corporation authorized execution of articles of merger. As required by State law and the federal charter of incorporation, the articles of merger were submitted to State and the Secretary of the Interior. The merger became effective September 27, 1995. All business activities of Taxpayer have been conducted under the federal corporate charter since that date.

Law

[Section 7805\(b\)](#) of the Code provides that the Secretary may prescribe the extent, if any, to which any ruling or regulation, relating to the internal revenue laws, shall be applied without retroactive effect.

[Revenue Ruling 94-16, 1994-1 C.B. 19](#), holds that an unincorporated Indian tribe or an Indian tribal corporation organized under section 17 of the Indian Reorganization Act of 1934, [25 U.S.C. section 477 \(IRA\)](#), is not subject to federal income tax on the income earned in the conduct of commercial business on or off the tribe's reservation. The ruling further holds, however, that a corporation organized by an Indian tribe under state law is subject to federal income tax on the income earned in the conduct of commercial business on and off the tribe's reservation.

Citing [§ 7805\(b\)](#) of the [Code](#), [Rev. Rul. 94-16](#) provides that it will not apply to income earned prior to October 1, 1994; by a corporation organized by an Indian tribe under state law, from activities conducted within the boundaries of the reservation (including gain or loss properly allocable to such activities from the sale or exchange of assets). [Revenue Ruling 94-65, 1994-2 C.B. 14](#), amplifying [Rev. Rul. 94-16](#), provides for further relief under [§ 7805\(b\)](#) of the Code. The ruling states, in part, that a tribe seeking to dissolve a corporation organized under state law and organize into a corporation under section 17 of the IRA will be granted further relief under [section 7805\(b\)](#) upon application for such relief provided it demonstrates to the Service that it has acted reasonably and in good faith to achieve the dissolution and organization.

Analysis

In the present case, Taxpayer began the process of evaluating its organizational options shortly after the issuance of [Rev. Rul. 94-16](#). Taxpayer's board of directors approved the preparation of documents necessary to request a charter under section 17 of the IRA before October 1, 1994. The Tribal Council of Tribe adopted a resolution petitioning the Secretary of the Interior to issue a federal charter of incorporation shortly after the revisions to the draft charter were completed. In addition, once the federal charter was issued for Taxpayer, Tribal Council of Tribe acted at its next scheduled meeting to ratify the charter. Articles of merger were authorized the next day and became effective within two weeks of the Tribe's ratification of the charter.

Conclusion

We conclude that Taxpayer has demonstrated that it acted reasonably and in good faith to achieve the dissolution of the state-chartered corporation and organization into a corporation under section 17 of the IRA. Accordingly, Taxpayer is granted retroactive

relief, pursuant to [§ 7805\(b\) of the Internal Revenue Code](#), for any federal income tax on income earned by Taxpayer for the period beginning on October 1, 1994, and ending September 27, 1995.

Taxpayer must attach a copy of this letter ruling to any income tax return to which it is relevant. We enclose a copy for that purpose.

Except as specifically provided in this letter, we neither express nor imply any opinion concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

This ruling is directed only to the taxpayer requesting it. [Section 6110\(j\)\(3\) of the Internal Revenue Code](#) provides that it may not be used or cited as precedent.

In accordance with the Power of Attorney on file in this office, a copy of this letter is being sent to your authorized representative.

Sincerely,

Assistant Chief Counsel (Income Tax and Accounting)

By

Karin G. Gross
Senior Technician Reviewer
Branch 3

Enc. Copy of this letter
Copy for [section 6110](#) purposes

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

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