

Revenue Ruling 94-16

Section 61 -- Gross Income Defined

(Also Sections 7805; 26 CFR 301.7805-1.)

1994-1 Cumulative Bulletin 19; Revenue Ruling 94-16

March 21, 1994

Federal income taxation of Indian tribes and corporations organized by Indian tribes. Neither an unincorporated Indian tribe nor a corporation organized under section 17 of the Indian Reorganization Act of 1934 is subject to federal income tax on its income, regardless of the location of the activities that produced the income. However, a corporation organized by an Indian tribe under state law is subject to federal income tax on its income, regardless of the location of the activities that produced the income. Revenue Ruling 81-295 clarified and Revenue Ruling 67-284 amplified.

ISSUE

Is income earned by an Indian tribe or tribal corporation from the conduct of a commercial business subject to federal income tax?

FACTS

Situation 1. Tribe T, a federally recognized Indian tribe, conducts an unincorporated commercial business both on and off T's reservation.

Situation 2. Tribe U incorporates itself as Corporation X under section 17 of the Indian Reorganization Act of 1934, 25 U.S.C. section 477 (1993) (IRA). X conducts a commercial business both on and off U's reservation.

Situation 3. Tribe V organizes Corporation Y under the law of State S. V is the sole shareholder of Y, which conducts a commercial business both on and off V's reservation.

LAW AND ANALYSIS

Section 1 of the Internal Revenue Code imposes a tax on the taxable income of individuals, trusts and estates. Section 11 imposes a tax on the taxable income of corporations.

Section 61 of the Code provides that gross income means all income from whatever source derived, unless otherwise provided by law. Section 63 defines taxable income as gross income minus deductions.

Revenue Ruling 67-284, 1967-2 Cumulative Bulletin 55, 58, *modified on another issue by* Revenue Ruling 74-13, 1974-1 Cumulative Bulletin 14, holds that Indian tribes are not taxable entities. The revenue ruling further holds that tribal income not otherwise exempt from federal income tax is includible in the gross income of the Indian tribal member when distributed to, or constructively received by, the tribal member.

Revenue Ruling 81-295, 1981-2 Cumulative Bulletin 15, relying on *Mescalero Apache Tribe v. Jones*, 411 U.S. 145, 157, n.13 (1973), holds that an Indian tribal corporation organized under section 17 of the IRA shares the same tax status as the Indian tribe and is not taxable on income from activities carried on within the boundaries of the reservation.

However, a corporation organized by an Indian tribe under state law is not the same as an Indian tribal corporation organized under section 17 of the IRA and does not share the same tax status as the Indian tribe for federal income tax purposes. Generally, the choice of corporate form will not be ignored. See *Moline Properties v. Commissioner*, 319 U.S. 436 (1943).

Because an Indian tribe is not a taxable entity, any income earned by an unincorporated tribe, regardless of the location of the business activities that produced the income, is not subject to federal income tax. An Indian tribal corporation organized under section 17 of the IRA shares the same tax status as the tribe. Therefore, any income earned by such a corporation, regardless of the location of the business activities that produced the income, is not subject to federal income tax. However, a corporation organized by an Indian tribe under state law does not share the same tax status as the tribe for federal income tax purposes and is subject to federal income tax on any income earned, regardless of the location of the business activities that produced the income.

Accordingly, Tribe T in Situation 1 and Corporation X in Situation 2 are not taxable entities and are not subject to federal income tax on any income earned from their business activities. Corporation Y in Situation 3 is a taxable entity and is subject to federal income tax on all income earned from its business activities.

HOLDING

An unincorporated Indian tribe or an Indian tribal corporation organized under section 17 of the 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. However, a corporation organized by an Indian tribe under state law is subject to federal income tax on the income earned in the conduct of the commercial business on and off the tribe's reservation.

This revenue ruling deals only with federal income taxes. It does not affect the application of other federal taxes, such as employment taxes and excise taxes (including excise taxes on wagering), to Indian tribes or tribal corporations.

PROSPECTIVE APPLICATION

Pursuant to section 7805(b) of the Code, the portion of the holding of this revenue ruling that applies to a corporation organized by an Indian tribe under state law will not be applied to income earned before October [*5] 1, 1994, 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).

EFFECT ON OTHER RULINGS

Revenue Ruling 81-295 is clarified. Revenue Ruling 67-284 is amplified.