

PRIVATE RULING 200420028

INTERNAL REVENUE SERVICE NATIONAL OFFICE TECHNICAL ADVICE MEMORANDUM

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

Section 6041 -- Information at Source

6041.00-00

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REFER REPLY TO: CASE MIS No.: TAM-168647-02/CC:PA:APJP:B1

Release Date: 5/14/04

Date: * * *

INTERNAL REVENUE SERVICE
NATIONAL OFFICE TECHNICAL ADVICE MEMORANDUM

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

LEGEND

Taxpayer = * * *
Corporation = * * *

ISSUE

[1] Whether Taxpayer is required to issue a Form 1099 to a powwow contest winner who receives a \$ 600 or more cash prize?

CONCLUSION

[2] Yes, Taxpayer is required to issue a Form 1099 to a powwow contest winner who receives a \$ 600 or more cash prize.

FACTS

[3] Taxpayer is a federally recognized Indian Tribe. See I.R.C. section 7701(a)(40); Rev. Proc. 2002-64, 2002-42 I.R.B. 717. Taxpayer hosts an annual powwow and awards prizes to the contest dance and drum winners. Powwows are cultural, not religious events. The cost of the powwow exceeds the revenue.

[4] During Taxpayer's annual powwow in * * *, Taxpayer gave cash prizes to the winners of the dance contests. Some of these cash prizes exceed \$ 600.00. The dance contest itself is not a separate trade or business, but is a

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significant portion of the powwow. According to the advertising materials and the dancers' prizes schedule, winners are awarded prizes. Nothing in these materials indicates that each dancer or drummer competing in the contest will receive a prize.

[5] According to Taxpayer, the powwow is not used to attract customers to other activities of the community. Taxpayer owns and/or operates a convenience store and campground. In addition, Corporation is wholly-owned by Taxpayer. Corporation owns and operates the casinos on Taxpayer's land. Corporation also leases and operates the hotel located on Taxpayer's land. There is no business relationship between the powwow, Taxpayer's business enterprises, and Corporation's casinos.

[6] Taxpayer argues that the information reporting requirements under section 6041 do not apply to the payments made to the winners of the powwow's dance contest because: Taxpayer is not subject to tax; Taxpayer is not a person for purposes of section 7701(a)(1) of the Internal Revenue Code ("Code"); and, Taxpayer is not engaged in a trade or business when conducting the powwow.

LAW AND ANALYSIS

[7] Section 6041(a) of the Code provides that all persons engaged in a trade or business and making payment in the course of the trade or business to another person, of rent, salaries, wages, premiums, annuities, compensations, remunerations, emoluments, or other fixed or determinable gains, profits, and income of \$ 600 or more in any taxable year, must file a return showing gains, profits, and income, and the name and address of the recipient.

[8] Section 1.6041-1(b) of the Income Tax Regulations ("regulations") provide that the term "all persons engaged in a trade or business," as used in section 6041(a), includes not only those so engaged for gain or profit, but also organizations the activities of which are not for the purpose of gain or profit. Thus, the term includes the organizations referred to in * * * sections 401(a), 501(c), 501(d), and 521 and in paragraph (i) of this section. On the other hand, section 6041(a) applies only to payments in the course of trade or business; hence it does not apply to an amount paid by the proprietor of a business to a physician for medical services rendered by the physician to the proprietor's child.

Tribe Tax Status

[9] Taxpayer argues that because it is a tax exempt entity it is not subject to any form of federal taxation, including section 6041 information reporting. Taxpayer is a federally recognized Indian tribe listed in Rev. Proc. 2002-64, 2002-42 I.R.B. 717. For this reason Taxpayer is not subject to federal income tax.

[10] Both the Service and the courts have stated many times that Indian tribes are subject to federal tax laws. Rev. Rul. 67-284, 67-2 C.B. 55, sets forth "the general principles applicable to the Federal income tax treatment of income paid to or on behalf of enrolled members of Indian tribes." Id. at 55. Although the revenue ruling was not intended to set forth general principles applicable to the tax status of tribes, it does contain a two sentence summary regarding the income taxation of Indian tribes. "Income tax statutes do not tax Indian tribes. The tribe is not a taxable entity." Rev. Rul. 94-16 also states that "Indian tribes are not taxable entities" citing Rev. Rul. 67-284. Id. at 19. This time, however, the statement appears with a clarification of its meaning. First, the ruling states: "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." Id. at 20. The ruling further explains: "This revenue ruling deals with federal income taxes. It does not affect the application of other federal taxes, such as employment taxes or excise taxes (including excise taxes on wagering), to Indian tribes or tribal corporation." Id.

[11] The courts support the Service's position that Indian tribes are taxable entities with respect to federal taxes other than income tax. Indian tribes are subject to FICA and FUTA. *Cabazon Indian Casino v. Internal Revenue Service*, 57 B.R. 398, 403 (Bankr. 9th Cir. 1986); *Washoe Tribes of Nevada and California v. United States*, 79-2 USTC (CCH) P9718, 44 AFT 2d (PH) P79-6006 (D. Nev. 1979). An Indian tribe is not exempt from federal excise tax, absent an express exemption in the Code. *Confederated Tribes of Warm Springs Reservation v. Kurtz*, 691 F.2d 878, 882 (9th Cir. 1982), cert. denied, 460 U.S. 1040 (1983); Rev. Rul. 94-81, 1994-2 C.B. 412. Section 2719(d) of the Indian Gaming Regulatory Act (25 U.S.C. section 2719(d)) (IGRA) does not exempt Indian tribes from certain federal excise tax. *Chickasaw Nation v. United States*, 534 U.S. 84 (2001) (resolving a split between the Fed. Cir. and the 10th Cir.).

[12] In this case, Taxpayer is a federally recognized Indian tribe. As a result, the Taxpayer is not subject to federal income tax. Although not subject to federal income tax, Taxpayer is subject to provisions of the Code, including provisions relating to information reporting such as section 6041.

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Person Pursuant To section 7701(a)

[13] Section 6041(a) applies to persons engaged in a trade or business. Taxpayer also argues that Indian tribes are not subject to the Code because an Indian tribe is not a person for purposes of section 7701(a)(1) of the Code. Section 7701(a) provides that the term person, when used in Title 26, where not otherwise distinctly expressed or manifestly incompatible with the intent thereof shall be construed to mean and include an individual, a trust, estate, partnership, association, company, or corporation. In *Chickasaw Nation v. United States*, 208 F.3d 871, 879 (10th Cir. 2000), the court concluded that an Indian tribe is a person within the meaning of section 7701(a)(1). It explained that "Congress unambiguously intended for the word 'person,' as used in section 7701(a)(1), to encompass all legal entities, including Indian tribes and tribal organizations, that are the subject of rights and duties." In Rev. Rul. 85-194, 1985-2 C.B. 301, the Service ruled that section 6041 applies to an Indian tribe.

[14] As stated above, the Taxpayer is a federally recognized Indian tribe. An Indian tribe is a person for purposes of sections 7701 and 6041. Therefore, Taxpayer is a person for purposes of sections 7701 and 6041.

Trade or Business Pursuant to section 6041

[15] Taxpayer argues that an Indian tribal government is not a trade or business, and therefore not subject to the reporting requirements of section 6041. According to Taxpayer, to be engaged in a trade or business, "the taxpayer must be involved in the activity with continuity and regularity and that the taxpayer's primary purpose for engaging in the activity must be for profit." *Commissioner v. Groetzinger*, 480 U.S. 23, 35 (1987).

[16] However, the Court stated that its interpretation of the phrase "trade or business" was limited to Code sections at issue in the case, which included section 162. *Id.* at 27, n.8. Section 6041 was not at issue in *Groetzinger*. Thus, *Groetzinger* is not controlling in this case.

[17] Neither section 6041 nor the regulations thereunder reference section 162 in defining the phrase "engaged in a trade or business." In fact, section 1.6041-1(b) provides a broad definition of trade or business. The regulations state that "all persons engaged in a trade or business" includes not only those so engaged for gain or profit, but also organizations the activities of which are not for the purpose of gain or profit. As a result, the information reporting requirements of section 6041 are not limited to organizations that are engaged in activities for gain or profit.

[18] According to the facts, Taxpayer's annual powwow is not used to attract customers to Taxpayer's other business enterprises and the cost of the powwow exceeds the revenue. However, as stated above, section 6041 and its regulations apply to organizations the activities of which are not for the purpose of gain or profit. Thus, even if Taxpayer's activities are not for the purpose of gain or profit, Taxpayer's payments to the powwow dance contest winners are subject to the information reporting requirements of section 6041 and the regulations thereunder.

CAVEAT(S)

[19] A copy of this technical advice memorandum is to be given to the taxpayer(s).

[20] Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.