

Revenue Ruling 81-295

Section 61. -- Gross Income Defined

*26 CFR 1.61-1: Gross income.*

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Gross income; Indian tribal corporation. A federally chartered Indian tribal corporation has the same tax status as the Indian tribe and is not taxable on income from activities carried on within the boundaries of the reservation.

ISSUE

Is a federally chartered Indian tribal corporation subject to federal income taxes when all of the corporation's business activities are carried on within the boundaries of the reservation?

FACTS

An Indian tribe was formally organized under a constitution and bylaws pursuant to section 16 of the Indian Reorganization Act of 1934, 25 U.S.C.A. section 476. At the time of formal organization, the tribal members also ratified a corporate charter as permitted by section 17 of the Act. As authorized by the Act, the Secretary of the Interior approved the tribe's constitution and bylaws and the corporation's charter.

The tribe's constitution established a tribal council and provided for rules governing council elections, tribal organization, and membership in the tribe. The constitution gives the council various governmental powers, including the rights to levy taxes, enact ordinances, and maintain a police force.

The corporate charter provides for a membership corporation consisting of the present and future members of the tribe. The purpose of the corporation is to further the tribe's economic development. Under the corporation's charter, each enrolled member of the tribe is issued a nontransferrable certificate of ownership evidencing his or her equal share in the corporation's assets. Profits from the corporation's business activities may be distributed among tribal members. The management of the corporation is vested in a board of directors composed of four elected tribal members and the chairperson of the tribal council.

The activities of the corporation include planning the use of and zoning and leasing the reservation land; overseeing the operations of cattle programs; reviewing and approving loan applications from members of the tribe for housing, commercial, and cattle loans; financial planning; tourism activities, including the production of an annual tribal fair and rodeo; and the development and operation of a catfish hatchery and ponds. The purpose of the corporation's activities is to conduct a communal economic effort to provide support for the tribe's members and enable the tribe to be self-sufficient. All the activities of the corporation are carried on within the boundaries of the reservation.

## LAW AND ANALYSIS

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

No constitutional or statutory provision expressly exempts Indian tribes from federal income taxation. Generally, however, the political entity embodied in the concept of an Indian tribe has been recognized and no tax liability has been asserted against a tribe with respect to tribal income from activities carried on within the boundaries of the reservation. See *Mescalero Apache Tribe v. Jones*, 411 U.S. 145 (1973).

The assets of an Indian tribe are owned by the tribe as a community and not by the members either as individuals or as tenants in common. The right to participate in the enjoyment of tribal property depends on continuing membership in the Indian tribe. See *Gritts v. Fisher*, 224 U.S. 640, 642 (1912). Before enactment of the Indian Reorganization Act, both the business and the governmental functions of the tribe were conducted by a single tribal entity. The Act allows for a dual mechanism by which governmental affairs are conducted under a constitution and bylaws adopted under section 16 of the Act and commercial matters are handled by a business corporation organized under section 17 of the Act. The purpose of section 17 is to "permit Indian tribes to equip themselves with the devices of modern business organization, through forming themselves into business corporations," S. Rep. No. 1080, 73rd Cong., 2d Sess. 1 (1934).

In *Mescalero Apache Tribe*, with respect to section 17 of the Indian Reorganization Act, the Court stated at 157, n. 13 that "the question of tax immunity cannot be made to turn on the particular form in which the Tribe chooses to conduct its business."

The United States Court of Appeals for the Fifth Circuit held in *Maryland Casualty Co. v. Citizens National Bank of West Hollywood*, 361 F. 2d 517 (5th Cir. 1966), that the incorporation of the Seminole Tribe of Florida under section 17 of the Act did not constitute a waiver of its sovereign immunity to garnishment. And in *Parker Drilling Co. v. Metlakatla Indian Community*, 451 F. Supp. 1127, 1136 (D. Alas. 1978), the court stated, regarding an Indian tribe incorporated under section 17 of the Act, that, "It is clear and apparently undisputed that the mere fact of corporate activity or existence does not waive the sovereign immunity [to suit] enjoyed by the Community."

## HOLDING

The federally chartered Indian tribal corporation 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.