

**Internal Revenue Service**

Department of the Treasury

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Person to Contact:

Telephone Number:

Refer Reply To:  
CC:CORP:B05 - PLR-101675-00  
Date:  
July 17, 2000

In re:

Taxpayer =

Tribe A =

Business B =

Date 1 =

This is in reply to your letter dated January 7, 2000, requesting rulings on the federal income tax consequences of a proposed, and subsequently consummated, transaction. You submitted additional information in letters dated February 28, February 29, March 2 and June 12, 2000. The information submitted in the request and in subsequent correspondence is summarized below.

Taxpayer was organized under state law and was wholly owned by Tribe A, a Federally-recognized Indian tribe. Taxpayer owned Business B and conducted Business B operations off-reservation. On Date 1, Tribe A established a corporation organized under section 17 of the Indian Reorganization Act of 1934, 25 U.S.C. section 477 (1993) (the IRA) and merged Taxpayer into this new corporation (Newco) with the intention of then selling all of Taxpayer's operating assets to a third party. Although the contemplated sale was subsequently canceled, the sale of the operating assets of Newco remains an option under consideration.

In its ruling request, Taxpayer argues that Revenue Rulings 94-16, 1994-1 C.B. 19 and 94-65, 1994-2 C.B. 14, allow for the reorganization of a state-chartered Indian owned corporation into a federally-chartered corporation, as described above, in a tax-free manner and requested rulings to that effect.

Revenue Ruling 67-284, 1967-2 C.B. 55, 58, modified on another issue by Rev. Rul. 74-13, 1974-1 C.B. 14, holds that Indian tribes are not taxable entities. Revenue Ruling 81-295, 1981-2 C.B. 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. Revenue Ruling 94-16 clarified Rev. Rul. 81-295 by holding that a section 17 corporation is not subject to Federal income tax on the income earned from the conduct of a commercial business either on or off the tribe's reservation. This is not true for state-chartered tribal corporations, which are subject to Federal income tax on income earned from commercial activities.

However, Rev. Rul. 94-16 provides retroactive relief for income earned before October 1, 1994 by a state-chartered corporation from activities conducted within the boundaries of the reservation (including gain and loss properly allocable to such activities from the sale or exchange of assets) if that corporation converts into a federally-chartered corporation under section 17 of the IRA. Revenue Ruling 94-65 amplifies Rev. Rul. 94-16 and, in pertinent part, extends the conversion period under certain circumstances, not applicable in this case.

Based on the facts and representations presented by the Taxpayer, we determined that Taxpayer's off-reservation business activities are not entitled to relief from Federal income tax pursuant to either Rev. Rul. 94-16 or Rev. Rul. 94-65.

Taxpayer now concedes and represents that its merger into Newco does not qualify for relief under Rev. Ruls. 94-16 or 94-65, and therefore, Taxpayer's merger into Newco is a taxable event.

We express no opinion about the tax treatment of the transaction under other provisions of the Code and regulations or about the tax treatment of any conditions existing at the time of, or effects resulting from, the transaction that are not specifically covered by the above ruling. Specifically, no opinion is expressed whether the transaction is taxable under §337(d) of the Internal Revenue Code, in the event that the transaction qualifies as a reorganization under §368, or under §1001.

The rulings contained in this letter are based on the facts and representations submitted under penalties of perjury in support of the request for rulings. Verification of this information may be required as part of the audit process.

This ruling is directed only to the taxpayer who requested it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

Each taxpayer involved in the transaction covered by this letter should attach a copy of the letter to its Federal income tax return for the taxable year in which the transaction is consummated.

Under a power of attorney on file in this office, a copy of this letter is being sent to the Taxpayer's authorized representative.

Sincerely yours,

Associate Chief Counsel (Corporate)

By *Filiz A. Serbes*

Filiz A. Serbes  
Assistant to the Chief, Branch 5