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INTERNAL REVENUE SERVICE
NATIONAL OFFICE TECHNICAL ADVICE MEMORANDUM

Index Numbers: 7805.01-01
61.32-00

CC:DOM:IT&A:3 - TAM-110452-98

District Director

Taxpayer's Name:

Taxpayer's Address:

Taxpayer's Identification No.:

Years Involved:

Date of Conference:

LEGEND:

Taxpayer =
State =
Tribe =

ISSUE:

Is Taxpayer entitled to 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 July 20, 1995?

CONCLUSION:

Yes. 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 described in 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 July 20, 1995.

FACTS:

Taxpayer was incorporated under the laws of State in 1984. Taxpayer is and 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 8803013. Taxpayer's private letter ruling was effectively revoked by the issuance of Revenue Ruling 94-16, 1994-1 C.B. 19.

Rev. Rul. 94-16 was issued in March 1994. By letter dated April 14, 1994, Taxpayer asked the Service to withdraw the revenue ruling. On June 2, 1994, the Service sent Taxpayer a letter denying its request. On July 12, 1994, the Governor of Tribe requested Taxpayer's chairman to work with legal counsel to investigate options to respond to Revenue Ruling 94-16 and to make recommendations to the Tribe's Council. 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 23, 1994, Taxpayer's legal counsel presented a letter to Taxpayer's board of directors, along with a draft federal charter, outlining the consequences of becoming a federally chartered corporation .

On September 6, 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 two days later 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.

On October 5, 1994, Taxpayer's attorney sent Taxpayer a letter stating that Rev. Rul. 94-65 had been issued, and that this allowed the Taxpayer to maintain non-taxable status until the date of a formal reorganization.

The Secretary of the Interior took final action to approve the federal charter on November 22, 1994. 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 Council met on November 29, 1994, and ratified the federal charter of incorporation.

On January 9, 1995, Taxpayer's attorney sent Taxpayer a draft plan of merger between the state-chartered corporation and the federally chartered corporation. On February 16, 1995, the board of directors of both the state-chartered corporation and the federally chartered corporation authorized execution of articles of merger. The Board also adopted a resolution requesting that the proposed merger be presented to the Tribal Council because the Tribe had recently elected a new Governor and council members who were not involved in the 1994 meetings

concerning Taxpayer's reorganization. The matter was placed on the May 16, 1995, agenda of the Tribal Council, and consideration began on that date. At its June meeting, the Tribal Council declined to approve the federal incorporation and merger. The Tribal Council reconsidered the matter a few days later. The council ratified the federal charter and approved the plan of merger on June 30, 1995.

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 July 20, 1995. All business activities of Taxpayer since that date have been conducted under the federal corporate charter.

LAW AND ANALYSIS:

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 there shall be no tax on 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 further relief under § 7805(b) of the Code. The ruling states:

> 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 § 7805(b) of the Code 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. In other circumstances,

the Service will consider the application of section 7805(b) on a case-by-case basis.

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. Once the federal charter was issued for Taxpayer, Tribal Council of Tribe acted promptly to consider ratification of the charter. Articles of merger were authorized after consideration by the Council, and they became effective within three weeks of the Tribe's ratification of the charter. Taxpayer has demonstrated that relief is appropriate under § 7805(b). 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 October 1, 1994, and ending July 20, 1995.

CAVEAT:

A copy of this technical advice memorandum is to be given to the taxpayer. Section 6110(j)(3) of the Code provides that it may not be used or cited as precedent.

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