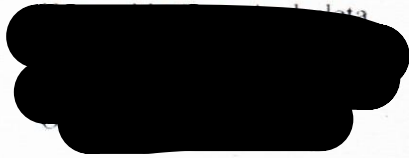




**JEROME E. HORTON**  
CHAIRMAN  
CALIFORNIA STATE BOARD OF EQUALIZATION

September 4, 2014



**Indian Tribes Not Taxed on Section 17 Corporation Income - Even when Earned Outside of Indian Country**

*Chairman Horton is striving to bring clarity to the tax consequences of Indian tribes operating businesses outside of Indian Country.*

Many of California's over 100 federally recognized Indian tribes are choosing to operate commercial activities, ranging from real estate enterprises to technology start-ups and everything in between, outside of Indian Country. This has led to some uncertainty for the tribes when it comes to tax consequences. Recently, we were successful in working with a California tribe and the Franchise Tax Board to clarify that tribes operating businesses organized as Section 17 corporations outside of Indian Country are not taxed on the income of the corporation. If your tribe is operating a Section 17 corporation and is faced with similar uncertainties regarding the tax consequences of the business now or in the future, the following information should be helpful.

*What is a Section 17 Corporation?*

Section 17 of the Indian Reorganization Act of 1934 (IRA) gives tribes the power to organize a federally-chartered tribal corporation to engage in business transactions. To form a Section 17 corporation, a tribe must draft a charter, submit it for approval to the Bureau of Indian Affairs, and receive an Approval Article or Certificate signed by the Secretary of the Interior. The corporation must be structured as a legal entity that is wholly owned by the tribe, but separate and distinct from the tribal government.

A Section 17 corporation shares the same privileges and immunities as the tribal government, but holds assets or property separately from the tribal governing body. The

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property or assets of the corporation are at risk in the amount necessary to satisfy creditors and developers; however, property owned by the separate and distinct tribal governmental body is still protected by sovereign immunity and is safe from the execution of a judgment against the corporation.

*Is a Section 17 Corporation's Income Taxable?*

Tribal corporations formed under Section 17 of the IRA are not recognized as separate entities for federal tax purposes; thus, the Section 17 corporation has the same tax status as the tribe. Under the Supreme Court case of *Mescalero Apache Tribe v. Jones* states may retain the right to tax tribal corporations, however California law under Regulation 23038(b)-1(a)(3) treats tribal corporations formed under Section 17 as an arm of the tribe. (411 U.S. 145 (1973)). Since the tribe is not subject to federal or California income tax, the Section 17 corporation is also not subject to federal or California income taxes for income derived from its activities. As such, neither the Internal Revenue Service nor the Franchise Tax Board can impose tax on a Section 17 corporation's income, regardless of whether the corporation's operations occur inside or outside of Indian Country.

*Do you still have questions?*

If you have any questions about the California taxation of a Section 17 corporation or other tribal tax issues, please feel free to contact Chairman Horton's Franchise and Income Tax Counsel, Ms. Jaelyn Appleby, at (916) 445-4154, or email Ms. Appleby at [jaelyn.appleby@boe.ca.gov](mailto:jaelyn.appleby@boe.ca.gov). As always, we are at your service.