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Corporation Owned by Indian Tribe Not Exempt From Taxes, Tax Court Holds.

Citations: Uniband Inc. v. Commissioner; 140 T.C. No. 13; No. 4718-06

The Tax Court held that a state-chartered corporation owned by an Indian tribe wasn't exempt from corporate income tax, that consolidated returns it filed with another corporation the tribe owned were invalid, and that the corporation had to reduce its wage and employee expense deductions by the amount of the Indian employment credits it was entitled to claim.

Uniband Inc., a Delaware corporation, was wholly owned by the Turtle Mountain Band of Chippewa Indians for the years at issue. Uniband filed consolidated returns with another corporation, TMMC, which was also owned by the tribe for the 1995-1998 tax years. The consolidated returns offset Uniband's income with TMMC's losses. The IRS found that the consolidated returns were invalid and that Uniband's tax liability should be calculated separately from TMMC's. The IRS also found that Uniband was entitled to the Indian employment credit under section 45A, which it hadn't claimed. The IRS applied the credit and reduced Uniband's deductions for wages by the amount of the credit. The adjustments resulted in Uniband's liability for tax deficiencies, which it challenged in the Tax Court.

Tax Court Judge David Gustafson rejected Uniband's argument that it was exempt from income tax as an integral part of an Indian tribe. While agreeing that the tribe itself was exempt from income tax, the court found that Uniband was a separate taxable entity. Gustafson explained that the tribe's immunity from tax didn't extend to Uniband, nor was the tribe or Uniband exempt from tax under any treaty, as Uniband had attempted to argue. The court also held that Uniband wasn't entitled to tribal sovereign immunity.

The Tax Court also rejected Uniband's claim that it was entitled to tax exemption based on its similarity to corporations established under section 17 of the Indian Reorganization Act of 1934. The court found that Uniband differed in several ways from section 17 corporations, which are exempt from tax. Gustafson explained that as a state-chartered corporation, Uniband lacked the special relation to the tribe that exists with a section 17 corporation.

The court also found that Uniband wasn't entitled to file a consolidated return with its sister corporation, TMMC, noting that the tribe that owned both corporations was not itself a corporation. The returns were also invalid because the tribe did not file them, consent to them, or report its items on the purported consolidated returns.

The Tax Court agreed with the IRS that Uniband wasn't entitled to deduct all of its wage and employee business expenses under section 162. The court concluded that Uniband's deductions were reduced according to the amount of the section 45A credit it was entitled to claim. The court noted that section 280C(a) disallows a deduction for wages or salaries paid or incurred for the tax year that equal the sum of the credits determined for that year under section 45A. The court declined to interpret section 280C as limiting the deductions to the extent the credits are currently

allowed after applying the general business credit limitation under section 38(c)(1).

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